N. J., F. D. 19526–19650 Issued January, 1933

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the food and drugs act]

19526–19650

[Approved by the Secretary of Agriculture, Washington, D. C., January 3, 1933]

19526. Adulteration of canned salmon. U. S. v. 1,000 Cases of Boat Brand Salmon. Decree of condemnation and confiscation. Product released under bond. (F. & D. No. 27402. I. S. No. 24367. S. No. 5606.)

Samples of salmon from the shipment herein described having been found to be stale or tainted, indicating decomposition, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of Alabama.

On December 18, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 1,000 cases of canned salmon, remaining unsold at Mobile, Ala., alleging that the article had been shipped by the Altoona Packing Co., of Altoona, Wash., from Astoria, Oreg., on or about October 21, 1931, and had been transported from the State of Oregon into the State of Alabama, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Boat Brand Salmon * * * Packed by Altoona Packing Co., Altoona, Wash."

It was alleged in the libel that the article was adulterated in that it consisted wholly or in part of a decomposed animal substance.

On February 23, 1932, the Altoona Packing Co., Altoona, Wash., claimant, having admitted the allegations of the libel, judgment of condemnation and confiscation was entered. It was ordered by the court that in lieu of destroying the product it be delivered to the said claimant upon payment of costs and the execution of a bond in the sum of $2,000, conditioned in part that it should not be used, sold, or disposed of without having been inspected and approved by this department.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19527. Adulteration of figs. U. S. v. 50 Boxes of White Ribbon Brand Figs, et al. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 27274, 27307, 27321, 27322, 27323, 27324. I. S. Nos. 29567, 29571, 29572, 29574, 39270, 39271. S. Nos. 5446, 5463, 5472, 5473, 5485, 5487.)

Samples of figs from the shipments herein described having been found to be worm-infested, moldy, sour, and worthless, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of New York.

On or about November 23 and December 1, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of 752 boxes of figs, remaining in the original unbroken packages in various lots at Buffalo and Niagara Falls, N. Y., consigned by the California Peach & Fig Growers Association, Fresno, Calif., alleging that the article had been shipped from Fresno, Calif., in part on or about November 3, 1931, and in part on or about November 5, 1931, and had

been transported from the State of California into the State of New York, and charging adulteration in violation of the food and drugs act. Portions of the article were labeled in part: "White Ribbon Brand * * * California Peach & Fig Growers." The remainder of the said article was labeled in part: "Blue Ribbon Figs * * * Grown and Packed in California * * * by California Peach & Fig Growers Association, Fresno."

It was alleged in the libels that the article was adulterated in that it consisted in part of a filthy, decomposed, or putrid vegetable substance.

On March 9, 1932, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19528. Adulteration of candy. U. S. v. Puckhaber Bros. Candy Co. Plea of guilty. Fine, $10. (F. & D. No. 26666. I. S. No. 27738.)

This action involved an interstate shipment of penny candy. The pieces were hollow and were found to contain trinkets made of lead.

On October 3, 1931, the United States attorney for the Eastern District of South Carolina, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Puckhaber Bros. Candy Co., a corporation, Charleston, S. C., alleging shipment by said company, in violation of the food and drugs act, on or about January 28, 1931, from the State of South Carolina into the State of Florida, of a quantity of candy that was adulterated. The article was labeled: "120 Money Boxes Puckhaber Bros. Candy Co., Charleston, S. C."

It was alleged in the information that the article was adulterated in that it contained an added poisonous and deleterious ingredient, to wit, lead, which might have rendered it injurious to health.

On January 15, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $10.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19529. Adulteration of canned prunes. U. S. v. 60 Cases of Canned Prunes. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27359. I. S. No. 29059. S. No. 5555.)

Samples of canned prunes taken from the shipment herein described having been found to be partially decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of New York.

On December 11, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 60 cases of canned prunes at New York, N. Y., alleging that the article had been shipped by the Sherwood Canning Co., Portland, Oreg., on or about April 29, 1931, and had been transported from the State of Oregon into the State of New York, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Totem Brand Fresh Prunes * * * Packed by Sherwood Canning Co., Sherwood, Oregon."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed vegetable substance.

On January 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19530. Adulteration and misbranding of corn flour. U. S. v. Independent Casing Co. Plea of guilty. Fine, $100. (F. & D. No. 26696. I. S. Nos. 7624, 14031.)

This action was based on the interstate shipment of quantities of corn flour, samples of which were found to be insect-infested. The labeling of the article failed to declare the quantity of contents.

On December 1, 1931, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Independent Casing Co., a corporation, Chicago, Ill., alleging shipment by said company, through its authorized agent, in violation of the food

and drugs act, as amended, on or about September 12, 1930, from the State of Nebraska into the State of Illinois, of quantities of corn flour that was adulterated and misbranded. The article was labeled in part: (Barrel) "The Independent Casing & Supply Co. Special Hereford Flour Chicago, U. S. A."

It was alleged in the information that the article was adulterated in that it consisted in part of a filthy animal substance.

Misbranding was alleged for the reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On January 25, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $100.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19531. Misbranding of peanut butter. U. S. v. Commercial Creamery Co. Plea of guilty. Fine, $25. (F. & D. No. 26693. I. S. No. 12544.)

Sample cans of peanut butter from the shipment herein described having been found to contain less than the declared weight, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Washington.

On October 26, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid an information against the Commercial Creamery Co., a corporation, Spokane, Wash., alleging shipment by said company, in violation of the food and drugs act as amended, on or about May 21, 1931, from the State of Washington into the State of Idaho, of a quantity of peanut butter that was misbranded. The article was labeled in part: (Can) "Net Weight 1 Pound Eatsum Brand Peanut Butter * * * Manufactured by Commercial Creamery Company, Spokane, Wash."

It was alleged in the information that the article was misbranded in that the statement "Net Weight 1 Pound," borne on the cans containing the said article, was false and misleading, and for the further reason that it was labeled so as to deceive and mislead the purchaser, since the said cans contained less than 1 pound of the article. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the cans contained less than represented.

On April 13, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $25.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19532. Misbranding of cottonseed meal. U. S. v. International Vegetable Oil Co. Plea of guilty. Fine, $100. (F. & D. No. 26573. I. S. Nos. 8828, 9675.)

This action was based on the interstate shipment of quantities of cottonseed meal which was found upon analysis to contain less protein and more fiber than was declared on the labels.

On September 8, 1931, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the International Vegetable Oil Co., a corporation, trading at Augusta, Ga., alleging shipment by said company, on or about September 15, 1930, from the State of Georgia into the State of New York, of two lots of cottonseed meal that was misbranded in violation of the food and drugs act. The article was labeled in part: (Tag) "Cottonseed Meal * * * Min. Protein 41.12% * * * Max. Crude Fibre 10.00%."

It was alleged in the information that the article was misbranded in that the statements, "Guaranteed Analysis Min. Protein 41.12% * * * Max. Crude Fibre 10.00%" and "41% Protein," borne on the tag, were false and misleading; and for the further reason that the article was so labeled as to deceive and mislead the purchaser; since the product in one lot contained not more than 37.65 per cent of protein and not less than 14.94 per cent of crude fiber, and in the other lot not more than 38.20 per cent of protein and not less than 11.42 per cent of crude fiber.

On March 25, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $100.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19533. Misbranding of canned shrimp. U. S. v. 27 Cases of Canned Shrimp. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27348. I. S. No. 294. S. No. 5512.)

The labels of the canned shrimp involved in this action bore an incorrect declaration of weight, also unwarranted health claims.

On December 9, 1931, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 27 cases of canned shrimp, remaining in the original unbroken packages at San Francisco, Calif., alleging that the article had been shipped on or about October 3, 1931, by the Lone Star Fish & Oyster Co., from Corpus Christi, Tex., and had been transported from the State of Texas into the State of California, and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Gibson's 'Fresh Pack' Shrimp * * * Wet Pack Contents 5¾ Ozs. A Health Food high in iodine content * * * packed by Charlie Gibson S. S. at Corpus Christi, Tex." The statement "Dry Pack Contents 5 Ozs.," indistinctly rubber-stamped and often blurred, also appeared on the label.

It was alleged in the libel that the article was misbranded in that the statements, "Wet Pack Contents 5¾ Ozs." and "A Health Food," were false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the statement "A Health Food" was a statement regarding the curative or therapeutic effect of the article, and was false and fraudulent. It was further alleged in the libel that the article was misbranded under the provisions of section 8, paragraph 3, of the act, as amended, which amendment requires that the quantity of the contents of food in package form be plainly and conspicuously marked on the outside of the package, since the quantity of the contents of the cans was less than the declared contents.

On December 23, 1931, the Lone Star Fish & Oyster Co., Corpus Christi, Tex., having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $100, conditioned in part that it be relabeled, under the supervision of this department, in order to remove all objectionable statements, and that it should not be sold or disposed of contrary to the provisions of the food and drugs act, or other existing laws.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19534. Misbranding of chick meat and bone meal. U. S. v. The Neatsfoot Oil Refineries Corporation. Plea of nolo contendere. Fine, $100. (F. & D. No. 26692. I. S. No. 9593.)

This action was based on the interstate shipment of a quantity of chick meat and bone meal which was found upon analysis to contain less protein than declared on the label.

On November 9, 1931, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Neatsfoot Oil Refineries Corporation, Philadelphia, Pa., alleging shipment by said company, in violation of the food and drugs act, on or about August 6, 1930, from the State of Pennsylvania into the State of New York, of a quantity of chick meat and bone meal that was misbranded. The article was labeled in part: (Tag) "Berg's Chick Meat and Bone Meal 55 Protein Manufactured by The Berg Company, Inc., Philadelphia, Pa., Guaranteed Analysis Min. Protein 55%."

It was alleged in the information that the article was misbranded in that the statement, to wit, "55 Protein * * * Guaranteed Analysis Min. Protein 55%," was false and misleading, and for the further reason that it was so labeled as to deceive and mislead the purchaser, since it had a protein content amounting to less than 55 per cent.

On January 21, 1932, a plea of nolo contendere to the information was entered on behalf of the defendant company, and the court imposed a fine of $100.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19535. Adulteration of butter. U. S. v. Alberta Cooperative Creamery Association. Plea of guilty. Fine, $20. (F. & D. No. 26688. I. S. No. 24714.)

Samples of butter from the shipment herein described having been found to contain less than 80 per cent of milk fat, the standard provided by Congress,

the Secretary of Agriculture reported the matter to the United States attorney for the District of Minnesota.

On January 7, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid an information against the Alberta Cooperative Creamery Association, a corporation, Alberta, Minn., alleging shipment by said company on or about April 21, 1931, in violation of the food and drugs act as amended, from the State of Minnesota into the State of Illinois, of quantities of butter that was adulterated.

It was alleged in the information that the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent of milk fat, as prescribed by the act of March 4, 1923.

On January 7, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $20.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19536. Adulteration of cabbage. U. S. v. 121 Crates of Cabbage. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27357. I. S. No. 42952. S. No. 5566.)

Arsenic having been found on cabbage taken from the shipment herein described, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Pennsylvania.

On December 11, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 121 crates of cabbage, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped on or about December 4, 1931, by the South Carolina Produce Association, from Geraty, S. C., and had been transported from the State of South Carolina into the State of Pennsylvania, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, to wit, arsenic, which might render the article injurious to health.

On January 4, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19537. Adulteration of tullibees. U. S. v. 247 Boxes of Tullibees. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27358. I. S. No. 39391. S. No. 5547.)

Samples of tullibees from the shipment herein described having been found to contain cysts, indicating infestation by parasitic worms, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of New York.

On December 11, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 247 boxes of the said tullibees, remaining in the original unbroken packages at Buffalo, N. Y., consigned by Charles E. Griggs, Chicago, Ill., alleging that the article had been shipped on June 11, 1931, from Chicago, Ill., and had been transported from the State of Illinois into the State of New York, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted, wholly or in part, of a filthy animal substance, and for the further reason that it was a portion of an animal unfit for food.

On February 12, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19538. Adulteration of tomato puree. U. S. v. 1,120 Cases, et al., of Tomato Puree. Decrees of condemnation entered. Product released under bond. (F. & D. Nos. 26527, 26528, 26713, 26719, 26725. I. S. Nos. 11715, 11716, 11717, 11718, 11720. S. Nos. 4841, 4842, 4843, 4857, 4876.)

Samples of tomato puree taken from the various shipments herein described were found to contain excessive mold.

On June 24, June 25, and July 2, 1931, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agri-

culture, filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of 6,938 cases of tomato puree, remaining in the original unbroken packages at Los Angeles, Calif., alleging that the article had been shipped by the Pleasant Grove Canning Co., in part from Pleasant Grove, Utah, and in part from Orem, Utah, on various dates between February 13, 1931 and June 1, 1931, and had been transported in interstate commerce from the State of Utah into the State of California, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: (Can) "Timpanogos Brand [or "Pleasant Grove Brand"] Tomato Puree Packed By Pleasant Grove Canning Co., Pleasant Grove—Orem, Utah." The remainder of the said article was labeled in part: (Can) "Golden Rey Brand Tomato Puree Packed For Pacific Wholesale Grocery Company, Los Angeles."

It was alleged in the libels that the article was adulterated in that it consisted in part of a decomposed vegetable substance.

On June 21, 1932, the Pleasant Grove Canning Co., Pleasant Grove, Utah, having filed a claim and answer admitting the allegations of the libel and praying release of the property for the purpose of separating the decomposed portion from the edible portion, orders were entered by the court permitting release of the said product to the claimant upon the execution of bonds totaling $5,203.50, conditioned upon the proper separation as aforesaid, and further conditioned that it should not be disposed of contrary to the provisions of the Federal food and drugs act or the laws of the State of California, and that claimant pay costs. On June 28, 1932, the court having found that the conditions of the bonds had been complied with, judgments were entered condemning the article as adulterated and ordering that the release be made permanent and the bonds exonerated.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19539. Misbranding of potatoes. U. S. v. 240 Sacks of Potatoes. Consent decree of condemnation. Product released under bond. (F. & D. No. 27354. I. S. No. 47751. S. No. 5560.)

Examination of the shipment of potatoes involved in this action, which were labeled U. S. Grade No. 1, showed that the article was below grade, since it contained about 20 per cent of grade defects consisting of sunburn, dry-rot, cuts, second growth, growth cracks, and pitted, scabby, misshapen potatoes.

On December 10, 1931, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 240 sacks of potatoes, remaining in the original packages at Owensboro, Ky., alleging that the article had been shipped by Leonard, Crosset & Riley, Greenville, Mich., November 27, 1931, and had been transported from the State of Michigan into the State of Kentucky, and charging misbranding in violation of the food and drugs act. The article was labeled in part: "U. S. Grade No. 1. Good Luck Michigan Potatoes."

It was alleged in the libel that the article was misbranded in that the statement "U. S. Grade No. 1" was false and misleading and deceived and misled the purchaser, since the said statement represented that the article complied with the standard established as the official United States Grade No. 1 for potatoes, whereas it was of a lower standard and grade.

On January 11, 1932, the Smith & Clark Co., Owensboro, Ky., having appeared as claimant for the property and having consented to the entry of a decree, judgment was entered finding the product adulterated in violation of section 8, paragraphs 2 and 4 of the act. (The word adulterated apparently was used inadvertently, since section 8 of the act defines misbranding.) The decree ordered that the product be condemned, and further ordered that it be released to the said claimant upon the execution of a bond in the sum of $500, conditioned that it be relabeled as "U. S. Grade—Unclassified," that it should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act or other existing laws, and that claimant pay costs of the proceedings.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19540. Alleged misbranding of candy. U. S. v. Startup Candy Co. Tried to a jury. Directed verdict of not guilty. (F. & D. No. 26625. I. S. Nos. 12296, 12297.)

Sample packages of candy from the shipment herein described having been found to contain less than the desired weight, the Secretary of Agriculture reported the matter to the United States attorney for the District of Utah.

On August 29, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid an information against the Startup Candy Co., a corporation, Provo, Utah, alleging shipment by said company, on or about March 16, 1931, in violation of the food and drugs act as amended, from the State of Utah into the State of Idaho, of a quantity of candy that was misbranded. The article was labeled in part: (Case) "From Provo, Utah, Startup Candy Co.;" (retail packages) "8 Oz." or "6 Oz."

It was alleged in the information that the article was misbranded in that the statement "8 Oz.," with respect to a portion of the article, and the statement "6 Oz.," with respect to the remainder, borne on the labels, were false and misleading; and for the further reason that the article was so labeled as to deceive and mislead the purchaser; since practically all of the packages contained less than labeled. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since they contained less than the quantity stated.

On January 7, 1932, the case came on for trial before the court and a jury. After hearing evidence introduced on behalf of the Government and the defendant, the jury, under instructions of the court, returned a verdict of not guilty.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19541. Adulteration and misbranding of butter. U. S. v. Midwest Dairies (Inc.). Plea of guilty. Fine, $300. (F. & D. No. 26665. I. S. Nos. 1664, 1670, 1671.)

This action was based on the interstate shipments of three lots of butter in which certain packages in all lots were found to be short of the declared weight. Samples taken from two lots of the article were also found to be deficient in milk fat, since they contained less than 80 per cent of milk fat, the standard provided by act of Congress.

On October 17, 1931, the United States attorney for the District of New Mexico, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Midwest Dairies (Inc.), a corporation, trading under the name of the Desert Gold Dairies (Inc.), at Portales, N. Mex., alleging shipment by said company, in part on or about September 28, 1930, and in part on or about October 4, 1930, in violation of the food and drugs act as amended, from the State of New Mexico into the State of Texas, of quantities of butter that was adulterated and misbranded. A portion of the article was labeled in part: "1 Pound Net Desert Gold Creamery Butter * * * Desert Gold Dairies, Inc." The remainder of the article was labeled in part: "Gold Seal Butter * * * One Pound Net."

It was alleged in the information that a portion of the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat, as prescribed by the act of March 4, 1923.

Misbranding was alleged for the reason that the statement, "Butter," with respect to the product in two shipments of the article, and the statements, "1 Pound Net," or "One Pound Net," with respect to the product in all three shipments, borne on the packages, were false and misleading; and for the further reason that the article was so labeled as to deceive and mislead the purchaser, since they represented that the article was butter, a product which should contain not less than 80 per cent by weight of milk fat, and that the packages each contained 1 pound net of the article; whereas the product in two of the said shipments contained less than 80 per cent by weight of milk fat, and the packages in all shipments contained less than 1 pound net. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was incorrect.

On January 26, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $300.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19542. Misbranding of dairy feed. U. S. v. Arcady Farms Milling Co. Plea of guilty. Fine, $100 and costs. (F. & D. No. 26592. I. S. No. 18562.)

Samples of dairy feed from the shipment herein described having been found to contain less protein and fat and more fiber than was declared on the label, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On October 10, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid an information against the Arcady Farms Milling Co., a corporation, trading at Chicago, Ill., alleging shipment by said company on or about September 18, 1930, in violation of the food and drugs act, from the State of Illinois into the State of Maryland, of a quantity of dairy feed that was misbranded. The article was labeled in part: "Dairy Feed * * * Protein 16.00%; Fat 3.50%; Fibre 13.50% * * * Manufactured by Arcady Farms Milling Co., Chicago, Ill."

It was alleged in the information that the article was misbranded in that the statements, "Protein 16.00%, Fat 3.50%, Fibre 13.50%," borne on the sacks containing the article, were false and misleading; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser; since the said article contained not more than 14.54 per cent of protein, not more than 2.99 per cent of fat, and not less than 15.50 per cent of fiber.

On January 25, 1932, the defendant entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19543. Adulteration of butter. U. S. v. Greeley Cooperative Creamry Co. Plea of guilty. Fine, $10 and costs. (F. & D. No. 26659. I. S. 30147.)

This action was based on the interstate shipment of 24 tubs of butter which were found upon analysis to be deficient in milk fat.

On October 6, 1931, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Greeley Cooperative Creamery Co., a corporation, Greeley, Nebr., alleging shipment by said company on or about April 15, 1931, in violation of the food and drugs act as amended, from the State of Nebraska into the State of New York, of a quantity of butter that was adulterated.

It was alleged in the information that the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent of milk fat as prescribed by the act of March 4, 1923.

On January 11, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $10 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19544. Misbranding of dairy feed. U. S. v. Edward E. Schultz, Alfred G. Schultz, and Clarence J. White (Schultz, Baujan & Co.). Pleas of guilty. Edward Schultz fined $25 and costs; Alfred G. Schultz and Clarence J. White each fined $25. (F. & D. No. 26631. I. S. No. 18370.)

Samples of dairy feed from the shipment herein described having been found to contain less fat than was declared on the label, and to have been made in part from oat hulls instead of being composed wholly of the ingredients named, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of Illinois.

On November 3, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid an information against Edward E. Schultz, Alfred G. Schultz, and Clarence J. White, members of a copartnership trading as Schultz, Baujan & Co., at Beardstown, Ill., alleging shipment by said defendants on or about January 10, 1931, in violation of the food and drugs act, from the State of Illinois into the State of Kentucky, of a quantity of dairy feed that was misbranded. The article was labeled in part: (Tag) "Dairy Feed made by Schultz, Baujan & Co., Beardstown, Ill."

It was alleged in the information that the article was misbranded in that the statements, "Fat 4.00 * * * Made from Cottonseed Meal, Corn Gluten Feed, Corn Gluten Meal, Old Process Linseed Oil Meal, Wheat Shorts, Wheat Bran, Corn Feed Meal, Fine Ground Oats, Molasses, Calcium Carbonate 2%, Salt 1%," borne on the tag attached to the sacks containing the article regarding the article, were false and misleading; and for the further reason that it was labeled so as to deceive and mislead the purchaser; since the article contained not more than 2.86 per cent of fat, and was not made wholly from the ingredients named, but was made in part from oat hulls.

On January 28, 1932, the defendants entered pleas of guilty to the information, and the court imposed a fine of $25 and costs on Edward Schultz and a fine of $25 each on Alfred G. Schultz and Clarence J. White.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19545. Misbranding of assorted jellies. U. S. v. 16½ Cases of Assorted Jellies. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27106. I. S. Nos. 21341, 21342, 21343, 21344. S. No. 5347.)

Sample jars of assorted jellies from the shipment herein described having been found to contain less than the declared weight, the Secretary of Agriculture reported the matter to the United States attorney for the District of Arizona.

On October 24, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 16½ cases of assorted jellies at Flagstaff, Ariz., alleging that the article had been shipped by the West Coast Preserves (Inc.), from Los Angeles, Calif., on or about May 26, 1931, and had been transported in interstate commerce from the State of California into the State of Arizona, and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Jars) "Gold Medal Brand, Net Weight 15 oz. * * * Packed by West Coast Preserves, Inc., Los Angeles, Calif."

It was alleged in the libel that the article was misbranded in that it was short weight and, therefore, bore a statement which was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the product was in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was not correct.

On April 19, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19546. Misbranding of canned peas. U. S. v. 18 Cases of Canned Peas. Default decree of condemnation and destruction. (F. & D. No. 27330. I. S. No. 39842. S. No. 5470.)

Samples of canned peas from the shipment herein described having been found to fall below the legal standard for the article, in that it contained hard peas in excess of the amount allowed by said standard, the Secretary of Agriculture reported the matter to the United States attorney for the District of Connecticut.

On December 4, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 18 cases of canned peas, remaining in the original unbroken packages at Bridgeport, Conn., alleging that the article had been shipped by Kirby Canning Co., from Trappe, Md., on or about June 27, 1931, and had been transported in interstate commerce from the State of Maryland into the State of Connecticut, and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Blue Water Brand Early June Peas Packed by Kirby Canning Co., Trappe, Md."

It was alleged in the libel that the article was misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, in that it contained hard peas in excess of the amount allowed by said standard, and its package or label did not bear a plain and conspicuous statement indicating that such canned food fell below such standard.

On April 29, 1932, no claimant having appeared for the property, judgment of condemnation was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19547. Misbranding of rice. U. S. v. 75 Bags of Rice. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27679. I. S. No. 22894. S. No. 5761.)

The rice in this shipment having been found to be of a lower grade than labeled, the Secretary of Agriculture reported the matter to the United States attorney for the Territory of Hawaii.

On January 25, 1932, the United States attorney for the District of Hawaii, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 75 bags of rice at Honolulu, Hawaii, consigned by the Growers Rice Milling Co., in San Francisco, Calif., alleging that the article had been shipped from San Francisco, Calif., on January 15, 1932, to Honolulu, Hawaii, and that it was misbranded in violation of the food and drugs act.

It was alleged in the libel that the article was misbranded in that the bags containing the article were labeled, "Extra Fancy California Japan Rice," which label was false and misleading and deceived and misled the purchaser, since the said label represented that the rice was Extra Fancy grade, whereas it was of a different and lower grade, to wit, Fancy grade.

On January 25, 1932, T. Sumida & Co. (Ltd.), a Hawaiian corporation, having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered. On the same date, the claimant having paid the costs of the proceedings and having executed a bond in the sum of $300, conditioned in part that the product should not be sold or otherwise disposed of contrary to the Federal food and drugs act or the laws of the Territory of Hawaii, the court ordered that the goods be released to the claimant.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19548. Misbranding of rice. U. S. v. 4,360 Bags, et al., of Rice. Consent decrees of condemnation and forfeiture. Product released under bond. (F. & D. Nos. 27677, 27678, 27680 to 27686, incl., 27990. I. S. Nos. 22892, 22893, 32427 to 32433, incl., 32740. S. Nos. 5758, 5759, 5762, 5763, 5766, 5771, 5772, 5774, 5775, 6032.)

The rice in the various shipments involved in this action was labeled "Extra Fancy," whereas it was found to be of a lower grade.

On January 19 and April 6, 1932, the United States attorney for the District of Hawaii, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the Territory of Hawaii, libels praying seizure and condemnation of 4,360 bags and 50 bags of rice, alleging that the article had been shipped in 11 different lots from San Francisco, Calif., to Honolulu, Hawaii, and that it was misbranded in violation of the food and drugs act. One lot, consisting of 75 bags, covered by the first described libel, was not seized, but was later libeled as set out in Notice of Judgment No. 19547. The 4,335 bags which were seized were shipped on the following dates by various consignors: 500 bags by Rosenberg Bros. & Co., on or about January 8, 1932; 500 bags, 100 bags, and 300 bags, by C. E. Grosjean Rice Milling Co., on or about January 11, 1932; 150 sacks and 450 sacks by the Capital Rice Mills, on or about January 11, 1932; 135 bags and 2,000 bags by Fred L. Waldron (Ltd.), on or about January 12, 1932, and 50 bags by the same shipper on or about March 29, 1932, and 150 sacks by F. M. Nonaka & Co., on or about January 15, 1932. The article was labeled in part: "Extra Fancy."

Misbranding was alleged in the libel filed with respect to the greater part of the said article for the reason that it was labeled, "Extra Fancy," which is a trade designation of a certain quality of rice, and that the article had been graded and found not to be Extra Fancy, and that such label was false and misleading. Misbranding was alleged with respect to the product contained in 50 sacks for the reason that it was labeled, "Best Grade California Extra Fancy Rice," which label was false and misleading and deceived and misled the purchaser, since it represented that the article was of an Extra Fancy grade, whereas it was of a different and lower grade, namely, "Fancy."

On January 20, January 21, and April 8, 1932, Fred L. Waldron (Ltd.), Y. Hata & Co., Fujii Junichi Shoten (Ltd.), and the Hilo Mills Co. (Ltd.), Hawaiian corporations, and Marusan Shokai, Honclulu, Hawaii, S. Hata Shoten, Hilo, Hawaii, Kyosadi Bros., Hilo, Hawaii, and the Hawaiian Mutual Supply Co., Hila, Hawaii, having appeared as claimants for respective portions of the article, and having consented to the entry of decrees, judgments of condemnation and forfeiture were entered. The said claimants having paid their pro rata costs of the libel proceedings, and having executed good and sufficient bonds to

the effect that the product would not be sold or otherwise disposed of contrary to the Federal food and drugs act or the laws of the Territory of Hawaii, the court ordered that it be released to the respective claimants.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19549. Adulteration of dressed herring. U. S. v. 9 Cases of Dressed Herring. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27957. I. S. No. 50767. S. No. 5978.)

Samples of dressed herring from the shipment herein described having been found to be infested with worms and unfit for food, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On March 7, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of nine cases of dressed herring at Chicago, Ill., alleging that the article had been shipped by Thompson Bros., from Two Harbors, Minn., on or about February 29, 1932, and had been transported from the State of Minnesota into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of a portion of an animal unfit for food.

On April 22, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19550. Adulteration of butter. U. S. v. George Hastriter. Plea of guilty. Fine, $10 and costs. (F. & D. No. 27464. I. S. Nos. 36342, 37112.)

Samples of butter taken from the shipments herein described were found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress.

On December 22, 1931, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against George Hastriter, McPherson, Kans., alleging shipment by said defendant, in violation of the food and drugs act, on or about June 25, 1931, from the State of Kansas into the State of Illinois, of quantities of butter that was adulterated.

It was alleged in the information that the article was adulterated in that a product which contained less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat as prescribed by the act of March 4, 1923, which the article purported to be.

On January 18, 1932, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19551. Adulteration of apples. U. S. v. 6 Lots of Apples. Default decree of forfeiture entered. Product ordered destroyed or disposed of for charitable purposes after being reconditioned. (F. & D. No. 27615. I. S. No. 41042. S. No. 5648.)

Arsenic and lead having been found on the apples in the interstate shipment herein described, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Wisconsin.

On January 4, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of six lots of apples, remaining in the original unbroken packages at Madison, Wis., alleging that the article had been shipped in interstate commerce by the W. E. Roche Fruit Co., from Yakima, Wash., on or about November 28, 1931, to Madison, Wis., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained added poisonous and deleterious ingredients, arsenic and lead, which might have rendered it injurious to health.

On February 2, 1932, no claimant having appeared for the property, judgment was entered ordering that the product be forfeited and destroyed. On February 6, the court entered an order directing that the destruction be delayed in order to ascertain whether the apples could be treated and made fit for human consumption and disposed of for charitable purposes without expense to the Government and, if so, that such treatment and disposition be made of the product.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19552. Misbranding of butter. U. S. v. Glenville Creamery Association. Plea of guilty. Fine, $40. (F. & D. No. 26679. I. S. Nos. 29345, 30084.)

This action was based on the interstate shipments of two lots of butter, samples of which were found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress.

On January 19, 1932, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Glenville Creamery Association, a corporation, Glenville, Minn., alleging shipment by said company in violation of the food and drugs act, on or about March 18 and March 25, 1931, from the State of Minnesota into the State of New York of quantities of butter that was misbranded. The article was labeled in part: "Pasteurized Sweet Cream Butter."

It was alleged in the information that the article was misbranded in that the statement "Butter," borne on the tubs containing the said article, was false and misleading, since the said statement represented that the article was butter, a product which should contain not less than 80 per cent by weight of milk fat as prescribed by the act of March 4, 1923, whereas it contained less than 80 per cent by weight of milk fat.

On January 19, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $40.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19553. Misbranding of butter. U. S. v. Frye & Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 27434. I. S. No. 22284.)

This action was based on the interstate shipment of a quantity of butter, sample packages of which were found to contain less than 1 pound net, the declared weight.

On January 19, 1932, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Frye & Co., a corporation, Seattle, Wash., alleging shipment by said company in violation of the food and drugs act, on or about June 5, 1931, from the State of Washington into the Territory of Alaska, of a quantity of butter that was misbranded. The article was labeled in part: (Retail package) "Wild Rose Fancy Creamery Butter. The Best One Pound Net Weight."

Misbranding of the article was alleged in the information for the reason that the statement, "One Pound Net Weight," borne on the packages, was false and misleading, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the packages contained less than 1 pound net of the article.

On February 8, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $25 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19554. Misbranding of clam nectar. U. S. v. 10 Cases of Clam Nectar. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27717. I. S. No. 22494. S. No. 5807.)

This action was based on a shipment of canned clam nectar, in which the cans were found to contain less than the declared weight. Samples also were found to fall below the standard of fill of container promulgated by this department.

On February 5, 1932, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 10 cases of clam nectar, remaining in the original unbroken packages at San Francisco, Calif., alleging that the article

had been shipped on or about January 29, 1932, in interstate commerce by the Guilford Packing Co., from Seattle, Wash., to San Francisco, Calif., and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Sea Breeze Clam Nectar Packed by Guilford Packing Co., Port Townsend, Washington, Net Contents 110 Fl. Oz."

It was alleged in the libel that the article was misbranded in that the statement on the label, "Net Contents one ten (110) Fl. Oz.," was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was incorrect. Misbranding was alleged for the further reason that the article was canned food and fell below the standard of fill of container promulgated by the Secretary of Agriculture for such canned food, since the entire contents did not occupy 90 per cent of the volume of the closed container, and the label did not bear a plain and conspicuous statement prescribed by the Secretary, indicating that it fell below such standard.

On February 27, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19555. Misbranding of yams. U. S. v. 487 Small and Large Crates of Yams. Default decree of condemnation, forfeiture, and sale. (F. & D. No. 27702. I. S. No. 39398. S. No. 5787.)

This action involved the interstate shipment of a quantity of yams in crates of two different sizes, all of which were labeled as containing 50 pounds. Sample crates taken from both sizes were found to contain less than the declared weight, the smaller crates examined having shown an average shortage of over 10 pounds.

On January 30, 1932, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 487 small and large crates of yams, remaining in the original unbroken packages at Buffalo, N. Y., alleging that the article had been shipped in interstate commerce by Jac. Bokenfohr, Prairieville, La., on January 16, 1932, to Buffalo, N. Y., and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: "Joe Brand * * * 50 Pounds Net."

It was alleged in the libel that the article was misbranded in that the statement appearing on both sizes of crates, "50 Pounds Net," was false and misleading and deceived and misled the purchaser, since the crates contained less than 50 pounds. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since the crates contained less than represented.

On February 6, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be sold in bulk by the United States marshal and that the containers be destroyed.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19556. Adulteration and misbranding of butter. U. S. v. Joseph R. Patton and Roy C. Kaufman (Perry Creamery Co.). Plea of guilty. Fine, $50. (F. & D. No. 27478. I. S. Nos. 24061, 27473.)

This action was based on the interstate shipment of quantities of butter, samples from which were found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress.

On January 29, 1932, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Joseph R. Patton and Roy C. Kaufman, copartners, trading as Perry Creamery Co., Perry, Okla., alleging shipment by said defendants, on or about February 19, 1931 and May 6, 1931, from the State of Oklahoma into the State of Kansas, of quantities of butter that was adulterated and misbranded. The article was labeled in part: (Package) "Extra Fancy Valleybrook Creamery Butter."

It was alleged in the information that the article was adulterated in that a product which contained less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat as prescribed by the act of March 4, 1923, which the said article purported to be.

Misbranding was alleged for the reason that the statement "Butter," borne on the packages containing the article, was false and misleading; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the said statement represented that the article was butter, a product which should contain not less than 80 per cent by weight of milk fat; whereas it was not butter, in that it contained less than 80 per cent by weight of milk fat.

On February 12, 1932, the defendants entered pleas of guilty to all counts of the information, and the court imposed a penalty of $50 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19557. Adulteration of dried black figs. U. S. v. 25 Boxes of Dried Black Figs. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27362. I. S. No. 22527. S. No. 5552.)

Samples of dried black figs from the shipment herein described having been found to be insect-infested, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Washington.

On December 14, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 25 boxes of dried black figs, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped in interstate commerce by the Joe Mangini Draying Co. (Inc.), for A. Ghianda, the grower, from San Francisco, Calif., on or about November 21, 1931, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Box) "Shasta Brand Fancy Black Mission Figs Grown & Packed by A. Ghianda, Thermalito, California."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19558. Adulteration of canned salmon. U. S. v. 598 Cases of Canned Salmon. Consent decree of condemnation. Product released under bond. (F. & D. No. 27365. I. S. No. 47159. S. No. 5565.)

Samples of canned salmon taken from the interstate shipment involved in this action having been found to be tainted or stale, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Kentucky.

On December 12, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 598 cases of the said canned salmon, remaining in the original packages at Campbellsville, Ky., alleging that the article had been shipped in interstate commerce by McGovern & McGovern, from Seattle, Wash., on or about November 1, 1931, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Sea Flyer Brand Alaska Pink Salmon * * * Distributed by McGovern & McGovern Seattle."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

On February 1, 1932, the Wrangel Packing Corporation, Seattle, Wash., having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $3,500, conditioned in part that it should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, and all other laws relating thereto. Subsequently an order was entered by the court permitting shipment of the goods under proper supervision to San Francisco, Calif., to be reconditioned in accordance with the terms of the decree.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19559. Adulteration and misbranding of apples. U. S. v. Ferdinand Hofmann. Plea of guilty. Fine, $25. (F. & D. No. 19738. I. S. No. 15530–V.)

This action involved an interstate shipment of apples represented to be New York standard A grade, and which were found to be below grade with respect to size and quality.

On June 7, 1926, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Ferdinand Hofmann, being one and the same person as Ferdinand Hoffmann, Fred Hoffman, and F. Hofmann, Rochester, N. Y., alleging shipment by said defendant, in violation of the food and drugs act, on or about April 13, 1925, from the State of New York into the State of Pennsylvania, of a quantity of apples that were adulterated and misbranded. The article was labeled in part: "New York Standard A Grade Baldwin Min. Size 2½ In. Min. Vol. 3 Bu. H. Harmer, Hilton, N. Y."

It was alleged in the information that the article was adulterated in that apples of a lower grade than New York standard A grade and of a minimum size less than 2½ inches in diameter, had been substituted in part for New York standard A grade apples of a minimum size not less than 2½ inches in diameter, which the said article purported to be.

Misbranding was alleged for the reason that the statement, "New York Standard A Grade Min. Size 2½ In.," borne on the barrel containing the article, was false and misleading; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser; since they consisted in part of apples of a lower grade than New York standard A grade and of a minimum size less than 2½ inches in diameter.

On March 15, 1932, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19560. Adulteration of canned blueberries. U. S. v. 1,756 Cases of Blueberries. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 25636. I. S. Nos. 9634, 15513. S. No. 3922.)

This action involved an interstate shipment of canned blueberries, samples of which were found to contain maggots and worms.

On January 7, 1931, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 1,756 cases of the said canned blueberries, remaining in the original unbroken packages at New York, N. Y., alleging that the article had been shipped in interstate commerce by the Stinson & Crabtree Co., from Hancock, Me., to New York, N. Y., on or about August 16, 1930, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: "Calevan Brand Fancy Maine Blueberries. Packed by Stinson & Crabtree Co., Hancock, Me."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy, decomposed, or putrid vegetable substance.

On April 25, 1932, the Stinson & Crabtree Co., Hancock, Me., having theretofore appeared as claimant, and no pleading motion or demurrer having been filed by the said claimant, default was noted and the court entered judgment ordering that the product be condemned, forfeited, and destroyed.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19561. Adulteration of apples. U. S. v. 12 Boxes of Apples. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27344. I. S. No. 24249. S. No. 5493.)

Arsenic and lead having been found on apples taken from the shipment involved in this action, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of Texas.

On December 14, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 12 boxes of apples, remaining in the original packages at Harlingen, Tex., alleging that the article had been shipped in interstate commerce by the Pacific Fruit & Produce Co., from Wenatchee, Wash., on or about October 31, 1931, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained added poisonous and deleterious ingredients, arsenic and lead, which might have rendered the said article injurious to health.

On March 25, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19562. Misbranding of meat scraps. U. S. v. 360 Sacks of Meat Scraps. Product ordered released under bond. (F. & D. No. 27159. I. S. No. 14900. S. No. 5007.)

Examination of the shipment of meat scraps involved in this action showed that the sacks were not labeled with a statement of the quantity of contents as required by law.

On July 23, 1931, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 360 sacks of meat scraps, remaining in the original unbroken packages at Kansas City, Mo., alleging that the article had been shipped in interstate commerce by the Riverdale Products Co., Calumet City, Ill., on or about June 25, 1931, and charging misbranding in violation of the food and drugs act as amended.

It was alleged in the libel that the article was misbranded in that the quantity of the contents was not plainly and conspicuously marked on the outside of the package, in terms of weight or measure.

On August 7, 1931, the Riverdale Products Co., Calumet City, Ill., having appeared as claimant for the property and having admitted the allegations of the libel and agreed to execute a bond in the sum of $1,000, to insure compliance with the order of the court, a decree was entered ordering that the product be released to be brought into conformity with the law under the supervision of this department.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19563. Misbranding of canned tomatoes. U. S. v. 339 Cases of Canned Tomatoes. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27317. I. S. Nos. 42836, 42837. S. No. 5496.)

Samples of canned tomatoes taken from the shipment involved in this action were found to contain peel in excess of the standard promulgated by the Secretary of Agriculture. The label failed to bear a declaration prescribed by this department to show that the product was substandard.

On November 30, 1931, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 339 cases of canned tomatoes, remaining in the original unbroken packages at Lancaster, Pa., alleging that the article had been shipped in interstate commerce by A. W. Sisk & Sons, Laurel, Del., on or about September 16, 1931, and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "I. X. L. Brand Tomatoes * * * Preston Canning Co. Distributors, Preston, Md."

It was alleged in the libel that the article was misbranded in that it was canned food and fell below the standard of quality promulgated by the Secretary of Agriculture for such canned food, in that it contained peel in excess of such standard and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary, indicating that it fell below such standard.

On February 19, 1932, the Oliphant Packing Co., having appeared as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $1,000, conditioned in part that it be relabeled under the supervision of this department, and that it should not be sold or otherwise disposed of contrary to the laws of the United States and all other existing laws.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19564. Adulteration of pecans. U. S. v. 17 Bags of Pecans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27391. I. S. No. 45456. S. No. 5588.)

Samples of pecans taken from the shipment involved in this action having been found to be moldy, rancid, decomposed, shriveled, and empty, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On December 18, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 17 bags of pecans at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about December 9, 1931 (1930), by the Bennett Day Pecan Co., from Mobile, Ala., to Chicago, Ill., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid vegetable substance.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19565. Adulteration of celery. U. S. v. 301 Crates of Celery. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27616. I. S. No. 41400. S. No. 5655.)

Arsenic having been found on celery taken from the interstate shipment involved in this action, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On December 30, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 301 crates of the said celery at Chicago, Ill., alleging that the article had been shipped in interstate commerce by M. C. Lonsdale, from Ferndale, Fla., on or about December 17, 1931, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous and deleterious ingredient, arsenic, in an amount which might have rendered it injurious to health.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19566. Adulteration of figs. U. S. v. 250 Cases of California Figs. Consent decree of destruction entered. (F. & D. No. 27257. I. S. No. 34268. S. No. 5432.)

Samples of figs taken from the shipment involved in this action having been found to be sour, moldy, and insect-infested, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of New York.

On November 17, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 250 cases of California figs, remaining in the original packages at Brooklyn, N. Y., alleging that the article had been shipped in interstate commerce by the California Peach & Fig Growers Association, from San Francisco, Calif., on or about October 17, 1931, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Choice White Ribbon Brand Adriatic Figs Produced and Packed by California Peach & Fig Growers * * * Fresno, Cal."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy, decomposed, or putrid vegetable substance.

On March 3, 1932, the claimant, the California Peach & Fig Growers Association, Fresno, Calif., having withdrawn its appearance and having consented to the entry of a decree, judgment was entered ordering that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19567. Adulteration of celery. U. S. v. 350 Crates of Celery. Product ordered released under bond to be reconditioned. (F. & D. No. 27724. I. S. Nos. 52020, 52021. S. No. 5812.)

Arsenic having been found on celery taken from the shipment involved in this action, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Wisconsin.

On February 8, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 350 crates of celery, remaining in the original unbroken packages at Stevens Point, Wis., alleging that the article had been shipped in interstate commerce by the Peppers Fruit Co., Compton, Calif., on or about January 11, 1932, to Chicago, Ill., that it had been reconsigned to Stevens Point, Wis., on or about February 1, 1932, and that it was adulterated in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous and deleterious ingredient, arsenic, which might have rendered it injurious to health.

A. L. Shafton and Peter Slomowitz, copartners, trading as A. L. Shafton & Co., Stevens Point, Wis., entered an appearance and claim for the property, executed a bond in the sum of $1,000, and petitioned release of the goods upon the condition that claimant pay costs and that it should not be disposed of in violation of the law. On February 15, 1932, the court ordered that the celery be delivered to the claimant upon the condition that it should not be sold or disposed of contrary to the provisions of the Federal food and drugs act. Subsequently proof having been submitted to the court that the celery had been reconditioned so as to remove all traces of arsenic, the bond was ordered exonerated.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19568. Misbranding of butter. U. S. v. Sugar Creek Creamery Co. Plea of guilty. Fine, $300. (F. & D. No. 26674. I. S. No. 25018.)

This action was based on the interstate shipment of a quantity of butter in cartons labeled as containing 1 pound, in which practically all of the cartons were found upon examination to contain less than the declared weight.

On November 27, 1931, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Sugar Creek Creamery Co., a corporation, trading at St. Louis, Mo., alleging shipment by said company, in violation of the food and drugs act, on or about May 11, 1931, from the State of Missouri into the State of Illinois of quantities of butter that was misbranded. The article was labeled in part: (Carton) "Sugar Creek Butter * * * Full Weight One Pound * * * Sugar Creek Creamery Co. * * * Danville, Ills;" (parchment wrapper) "One Pound Net Weight."

It was alleged in the information that the article was misbranded in that the statements "Full Weight One Pound" on the carton, and "One Pound Net Weight" on the parchment wrapper, were false and misleading; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser; since the cartons did not contain 1 pound of the article, but did contain in each of practically all of the cartons, less than 1 pound of butter.

On March 11, 1932, a plea of guilty to count I of the information, embracing the above charge, was entered on behalf of the defendant company and the court imposed a fine of $300.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19569. Misbranding of wheat and rye middlings and screenings. U. S. v. Gwinn Bros. & Co. Plea of guilty. Fine, $200. (F. & D. No. 26675. I. S. Nos. 18351, 18359.)

This action was based on the interstate shipment of two lots of wheat and rye middlings and screenings. Samples of both lots were found low in protein and samples from one of the lots was also low in fat. The label of the article purported to declare the ingredients, but failed to declare the corn products, which examination showed present.

On October 7, 1931, the United States attorney for the Southern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States an information against Gwinn

Bros. & Co., a corporation, Huntington, W. Va., alleging shipment by said company in violation of the food and drugs act, on or about September 4, and 12, 1930, from the State of West Virginia into the State of Kentucky of quantities of wheat and rye middlings and screenings that were misbranded. The article was labeled in part: "Fancy White Wheat & Rye Middlings and Screenings Made by Gwinn Bros. & Co., Huntington, W. Va. Guaranteed Analysis Protein 15.00 Per Cent Fat 4.00 * * * Made From Wheat Middlings, Rye Middlings, Ground Wheat Screenings 2%."

It was alleged in the information that the article was misbranded in that the statement, "Guaranteed Analysis Per Cent Protein 15.00 * * * Made from: Wheat Middlings, Rye Middlings, Ground Wheat Screenings 2%," with respect to both lots of the article, and the statement "Fat 4.00," with respect to one lot, were false and misleading; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the said statements represented that the article contained not less than 15 per cent of protein and not less than 4 per cent of fat and that it was made exclusively from wheat middlings, rye middlings, and ground wheat screenings (2 per cent); whereas the article contained less than 15 per cent of protein, it was made in part from added undeclared corn products, and one lot of the article contained less than 4 per cent of fat.

On March 8, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $200.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19570. Adulteration of tomato puree and adulteration and misbranding of canned tomatoes. U. S. v. Benjamin Joseph Fettig (Fettig Canning Co.). Plea of guilty. Fine, $75. (F. & D. No. 26686. I. S. Nos. 13506, 15663, 15675.)

This action was based on interstate shipments of tomato puree and alleged canned tomatoes, both of which upon examination were found to contain excessive mold, and the latter was not made of sound whole ripe tomatoes as represented.

On or about October 30, 1931, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Benjamin Joseph Fettig, trading as the Fettig Canning Co., Elwood, Ind., alleging shipment by said defendant in violation of the food and drugs act, on or about September 12, 1930, from the State of Indiana into the State of Ohio, of a quantity of tomato puree that was adulterated, and on or about September 15, 1930, from the State of Indiana into the State of Pennsylvania, of a quantity of canned tomatoes that were adulterated and misbranded. The puree was labeled in part: "Retloc [or "Dandy Line"] Brand Tomato Puree." The canned tomatoes were labeled in part: "Mary's Choice Brand [design of whole ripe tomato] Tomatoes Extra Standard Puree * * * Packed by Daleville Canning Co., Daleville, Ind." The word "Puree" on the label of the said canned tomatoes was indistinct.

The information alleged that both articles were adulterated in that they consisted in whole and in part of a filthy, decomposed, and putrid vegetable substance.

The information further alleged that the canned tomatoes were misbranded in that the statement "Extra Standard Tomatoes," together with the design of a whole ripe tomato, not corrected by the inconspicuous statement "Puree," borne on the label, were false and misleading, since they represented that the article was made of whole, ripe, sound tomatoes; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was a product prepared from whole, ripe, sound tomatoes, whereas it was prepared from partially decomposed tomatoes.

On March 29, 1932, motions to quash the information having been overruled by the court, the defendant entered a plea of guilty and the court imposed a fine of $25 on each count of the information, a total fine of $75 without costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19571. Misbranding of canned tomatoes. U. S. v. 1,075 Cases of Canned Tomatoes. Consent decree of condemnation. Product released under bond. (F. & D. No. 27596. I. S. No. 44452. S. No. 5626.)

Examination of the canned tomatoes in the shipment involved in this action showed that the article fell below the standard promulgated by this department for canned tomatoes, in that it contained some decayed material, and excessive

peel, and blemishes, and that it was not labeled to show that it was substandard.

On December 23, 1931, the United States attorney for the Western District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 1,075 cases of canned tomatoes, remaining in the original unbroken packages at Fort Smith, Ark., alleging that the article had been shipped in interstate commerce by the Westville Canning Co., Westville, Okla., on or about August 12, 1931, and charging misbranding in violation of the food and drugs act as amended.

It was alleged in the libel that the article was misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it contained decayed material and an excessive amount of peel and blemishes, and the labels did not bear a plain and conspicuous statement prescribed by the said Secretary, indicating that it fell below such a standard.

On February 24, 1932, the Griffin Grocery Co., Fort Smith, Ark., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment was entered ordering the product condemned. It was further ordered by the court that the said product be released to the claimant for relabeling and disposition in accordance with the Federal food and drugs act, under the supervision of this department, upon the filing of a bond in the sum of $1,500.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19572. Adulteration of butter. U. S. v. 19 Boxes, et al., of Butter. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27833. I. S. No. 42942. S. No. 5840.)

Samples of butter taken from the interstate shipment involved in this action were found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress.

On February 10, 1932, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 37 boxes of butter, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped in interstate commerce by Red 73 Creamery (Inc.), Union City, Ind., on or about February 3, 1932, to Philadelphia, Pa., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent of milk fat.

On February 15, 1932, A. F. Bickley & Son, Philadelphia, Pa., having appeared as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $800, conditioned in part that it should not be sold or otherwise disposed of contrary to the Federal food and drugs act, or the laws of any State, Territory, District, or insular possession.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19573. Adulteration of celery. U. S. v. 103 Crates, et al., of Celery. Product adjudged adulterated and ordered released under bond to be salvaged. (F. & D. Nos. 27757, 27758. I. S. Nos. 47501, 47502. S. Nos. 5837, 5838.)

Arsenic having been found on celery taken from both shipments involved in these actions, the Secretary of Agriculture reported the matter to the appropriate United States attorneys.

On February 16, 1932, the United States attorney for the District of Nebraska filed in the United States District Court a libel praying seizure and condemnation of 103 crates of the said celery at Omaha, Nebr., and on or about February 18, 1932, the United States attorney for the Western District of Missouri filed a libel against 80 half-crates of the same product at St. Joseph, Mo. It was alleged in the libels that the article had been shipped in interstate commerce by the Peppers Fruit Co., from Compton, Calif., the former on or about January 8, 1932, to Omaha, Nebr., and the latter on or about

January 20, 1932, to St. Joseph, Mo., and that it was adulterated in violation of the food and drugs act. The article was labeled in part: "Peppers 3" or "Peppers 3½."

Adulteration of the article was alleged in the libels for the reason that it contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it injurious to health.

The Independent Fruit Co., St. Joseph, Mo., and the Levinson Fruit Co., Omaha, Nebr., appeared as claimants in the respective cases, admitted the allegations of the libels, and consented to the condemnation and forfeiture of the goods. On February 27, 1932, judgment was entered in the Omaha, Nebr., case finding the product adulterated and ordering that it be released to the claimant upon payment of costs and the execution of a bond in the sum of $500, conditioned that it be washed or wiped to remove the poisonous residue, and that it should not be sold or otherwise disposed of contrary to the Federal food and drugs act, and all other laws. A decree containing similar provisions was entered on February 20, 1932, in the case instituted at St. Joseph, Mo.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19574. Adulteration of bluefins. U. S. v. 7 Boxes of Bluefins. Default decree of destruction entered. (F. & D. Nos. 27767, 27768. I. S. Nos. 47799, 50830. S. Nos. 5866, 5869.)

Bluefins taken from the interstate shipments involved in this action were found to be infested with worms.

On February 20, 1932, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of seven boxes of bluefins, remaining in the original packages at Covington, Ky., consigned by the Hogstad Fish Co., Duluth, Minn., in part on February 15, 1932, and in part on February 16, 1932, alleging that the article had been transported in interstate commerce from Duluth, Minn., to Covington, Ky., and charging adulteration in violation of the food and drugs act. The article was labeled in part: "From Hogstad Fish Co., Duluth, Minnesota."

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy and putrid animal substance, and in that it consisted of portions of animals unfit for food.

On February 20, 1932, no claimant having appeared for the property and the court having found that the fish were spoiled and unfit for human consumption, judgment was entered ordering their immediate destruction by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19575. Adulteration of butter. U. S. v. 15 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27836. I. S. No. 5380. S. No. 5823.)

Samples of butter taken from the interstate shipment involved in this action were found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress.

On February 1, 1932, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 15 tubs of butter at New York, N. Y., alleging that the article had been shipped in interstate commerce by the White City Creamery, Mott, N. Dak., through the Northwest Dairy Forwarding Co., Carlton, Minn., on or about January 23, 1932, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent of milk fat as provided by the act of March 4, 1923.

The Zenith-Godley Co. (Inc.), New York, N. Y., agent for the White City Creamery Co., Mott, N. Dak., owner of the property, interposed a claim and admitted the allegations of the libel, consented to the entry of a decree, and agreed that the product be reconditioned so that it contain at least 80 per cent of butterfat. On February 5, 1932, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be

released to the said claimant upon payment of costs and the execution of a bond in the sum of $400, conditioned in part that it be reworked so that it comply with the Federal food and drugs act, and all laws State and Federal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19576. Adulteration and misbranding of butter. U. S. v. 65 Tubs of Butter. Decree entered ordering product released under bond to be reworked. (F. & D. No. 27831. I. S. No. 48020. S. No. 5847.)

Samples of butter taken from the shipment involved in this action having been found to contain less than 80 per cent by weight of milk fat, the Secretary of Agriculture reported the matter to the United States attorney for the District of Massachusetts.

On February 11, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 65 tubs of butter, remaining in the original unbroken packages at Somerville, Mass., consigned about February 2, 1932, alleging that the article had been shipped in interstate commerce by the Pipestone Produce Co., from Pipestone, Minn., to Somerville, Mass., and charging adulteration and misbranding in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, which the article purported to be, the act of Congress approved March 4, 1932, providing that butter should contain not less than 80 per cent by weight of milk fat.

Misbranding was alleged for the reason that the article was labeled butter, which was false and misleading, since it contained less than 80 per cent of milk fat.

On February 12, 1932, First National Stores (Inc.), Somerville, Mass., having appeared as claimant for the property and having admitted the allegations of the libel, a decree was entered ordering that the product be released to the said claimant upon payment of costs and the deposit of a cash bond in the sum of $1,000 as security that the butter would not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, and all other laws. It was further ordered by the court that the product be reworked so that it contain at least 80 per cent of butterfat.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19577. Adulteration and alleged misbranding of vinegar. U. S. v. 38 Barrels of Vinegar. Default Decree of condemnation and destruction. (F. & D. No. 27607. I. S. No. 36221. S. No. 5639.)

This action involved the interstate shipment of a quantity of vinegar which was found to be below the declared acid strength and which also was found to contain arsenic.

On December 26, 1931, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 38 barrels of the said vinegar at Grand Island, Nebr., alleging that the article had been shipped in interstate commerce on or about October 20, 1931, by the Western Cider Vinegar Co., from Milton, Oreg., to Grand Island, Nebr., and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: "Maxi Cobb Brand Apple Cider Vinegar Reduced to 5%."

It was alleged in the libel that the article was adulterated in that it was deficient in acid, and contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it harmful to health.

Misbranding was alleged for the reason that the statement on the label, "Reduced to 5%," was false and misleading and deceived and misled the purchaser.

On March 8, 1932, no claimant having appeared for the property, judgment was entered finding the product adulterated and ordering that it be condemned and destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19578. Adulteration of dried figs. U. S. v. 30 Sacks of Dried Figs. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27659. I. S. No. 22888. S. No. 5705.)

This action involved the interstate shipment of a quantity of dried figs, samples of which were found to be insect-infested, moldy, and sour.

On January 14, 1932, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 30 sacks of dried figs, remaining in the original unbroken packages at Portland, Oreg., alleging that the article had been shipped on or about January 5, 1932, in interstate commerce, by Koligian Bros., from San Francisco, Calif., to Portland, Oreg., and charging adulteration in violation of the food and drugs act. The article was labeled in part: "From Chas. Koligian, Fresno."

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On March 21, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19579. Misbranding of fresh apricots. U. S. v. Alexander G. Johns and Henry A. Bonzagno (Central Fruit Distributors). Pleas of guilty. Fine, $150. (F. & D. No. 27482. I. S. No. 22685.)

This action was based on the interstate shipment of a quantity of fresh apricots packed in crates which were found to contain less than 24 pounds net, the declared weight.

On January 28, 1932, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Alexander G. Johns and Henry A. Bonzagno, co-partners, trading as Central Fruit Distributors, Armona, Calif., alleging shipment by said defendants in violation of the food and drugs act as amended, on or about June 17, 1931, from the State of California into the State of Colorado, of a quantity of fresh apricots that were misbranded. The article was labeled in part: "Purple and Gold Brand 'Quality Fruit' Packed by Central Fruit Distributors Fresno, California Net Weight When Packed 24 Pounds."

It was alleged in the information that the article was misbranded in that the statement "Net Weight When Packed 24 Pounds," borne on the crates, was false and misleading, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the crates did not contain 24 pounds net weight of the article but did contain a less amount. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since the statement made was not correct.

On March 18, 1932, the defendants entered pleas of guilty to the information, and the court imposed a fine of $150 upon the said defendants, as a copartnership.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19580. Adulteration of raisins. U. S. v. 50 Cases of Cluster Raisins. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27610. I. S. No. 19818. S. No. 5642.)

Samples of cluster raisins, taken from the interstate shipment involved in this action, having been found to be insect-infested and filthy, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Texas.

On December 29, 1931, the United States attorney filed in the United States District Court for the district aforesaid a libel praying seizure and condemnation of 50 cases of cluster raisins, remaining in the original unbroken packages at Beaumont, Tex., alleging that the article had been shipped in interstate commerce from Fresno, Calif., on or about October 15, 1931, by Koligian Bros., to Dallas, Tex., and reshipped to Beaumont, Tex., and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Three Crowns Paragon Brand London Bakers Packed by Koligian Bros., Fresno, California."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy, putrid, and decomposed vegetable substance.

On March 22, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19581. Misbranding of Spanish style hot sauce. U. S. v. Greco Canning Co. (Inc.). Plea of guilty. Fine, $20. (F. & D. No. 27507. I. S. No. 12551.)

This action was based on the interstate shipment of a quantity of canned Spanish Style hot sauce in which the cans, upon examination, were found to contain less than 8 ounces net, the declared weight.

On March 18, 1932, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Greco Canning Co. (Inc.), a corporation, trading at San Jose, Calif., alleging shipment by said company, in violation of the food and drugs act as amended, on or about February 17, 1931, from the State of California into the State of Washington, of a quantity of the said Spanish style hot sauce that was misbranded. The article was labeled in part: (Can) "Pep Spanish Style Hot Sauce * * * Net Contents 8 Oz. Packed by Greco Canning Co., Inc., San Jose, Calif."

It was alleged in the information that the article was misbranded in that the statement "Net Contents 8 Oz.," borne on the can label, was false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the cans did not contain 8 ounces net, but did contain a less amount. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was incorrect.

On March 28, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $20.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19582. Adulteration of tomato pulp. U. S. v. 5,588 Cans of Tomato Pulp. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27690. I. S. Nos. 44841, 50137, 50600. S. No. 5678.)

Samples of canned tomato pulp from the shipment involved in this action having been found to contain excessive mold, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On or about January 28, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 5,588 cans of tomato pulp at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about October 28, 1931, by the Wabash Valley Canning Co., from Attica, Ind., to Chicago, Ill., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed vegetable substance.

On March 12, 1932, the Wabash Valley Canning Co., Chicago, Ill., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $2,000, conditioned in part that it be salvaged under the supervision of this department and should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, and all other laws.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19583. Adulteration and misbranding of canned sardines. U. S. v. 41 Cases of Canned Sardines. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27728. I. S. No. 22547. S. No. 5816.)

This action involved an interstate shipment of canned sardines, samples of which were found to be decomposed. The statement of the quantity of contents appearing on the label was not plain and conspicuous.

On February 8, 1932, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 41 cases of the said canned sardines, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped in interstate commerce on or about January 11, 1932, by MacNichol & Co. from San Francisco, Calif., to Seattle, Wash., and charging

adulteration and misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Spellmon Brand Smoked California Sardines Product U. S. A. net weight 5 oz. metric equivalent 141 grams Toyo Fisheries Wilmington, California." The statement of the quantity of the contents was placed inconspicuously on the cans.

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a decomposed animal substance.

Misbranding was alleged for the reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On March 15, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19584. Adulteration of dried grapes. U. S. v. 125 Cases of Dried Grapes. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27743. I. S. No. 32507. S. No. 5825.)

This action involved the interstate shipment of a quantity of dried grapes which, upon examination, were found to be in part dirty and insect-infested.

On February 11, 1932, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 125 cases of the said dried grapes, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped in interstate commerce on or about January 30, 1932, by the Bonner Packing Co., from Fresno, Calif., to Seattle, Wash., and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Case) "Bonner's Dried Alicante Grapes Packed by Bonner Packing Co., Fresno, California."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a decomposed, filthy, and putrid vegetable substance.

On March 15, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19585. Adulteration of apples. U. S. v. 660 Baskets of Apples. Product adjudged adulterated and ordered released under bond. (F. & D. No. 27689. I. S. No. 31921. S. No. 5776.)

Arsenic and lead having been found on samples of apples taken from the interstate shipment involved in this action, the Secretary of Agriculture reported the matter to the United States attorney for the District of Nebraska.

On February 1, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 660 baskets of apples at Omaha, Nebr., alleging that the article had been shipped in interstate commerce, on or about January 14, 1932, by D. T. Sleep, from Ontario, Oreg., to Omaha, Nebr., and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Winesap Grown Packed and Shipped by D. T. Sleep, Ontario, Oregon."

It was alleged in the libel that the article was adulterated in that it contained added poisonous or deleterious ingredients, arsenic and lead, which might have rendered it injurious to health.

N. H. Nelson & Co. entered an appearance and claim for the property, admitted the allegations of the libel and consented that judgment might be entered for the condemnation and forfeiture of the product. On February 2, 1932, a decree was entered finding the product adulterated and ordering that it be released to the claimant upon payment of costs and the execution of a bond in the sum of $2,000, conditioned that it should not be sold or otherwise disposed of contrary to the Federal food and drugs act, and all other laws. It was further ordered by the court that the claimant cause the apples to be washed or wiped, or reconditioned in any manner which would remove the poisonous or deleterious ingredients.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19586. Adulteration of dried grapes. U. S. v. 25 Boxes of Dried Grapes. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27676. I. S. No. 22890. S. No. 5757.)

This action involved the interstate shipment of a quantity of dried grapes which, upon examination, were found to be in part filthy and insect-infested.

On January 20, 1932, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 25 boxes of the said dried grapes, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped in interstate commerce, on or about January 7, 1932, by the Rosemel Fruit Co., from San Francisco, Calif., to Seattle, Wash., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy, decomposed, or putrid vegetable substance.

On March 15, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19587. Adulteration of fig paste. U. S. v. 260 Cases of Fig Paste. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27658. I. S. No. 22447. S. No. 5739.)

Samples of fig paste taken from the shipment involved in this action having been found to be partially decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Washington.

On January 14, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 260 cases of the said fig paste, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped in interstate commerce, on or about October 19, 1931, by Anton Beban, Madera, Calif., to Seattle, Wash., and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Fig Paste Anton Beban Madera, Cal."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a decomposed vegetable substance.

On March 11, 1932, George Beban, Madera, Calif., claimant, having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be delivered to the said claimant upon payment of costs and the execution of a bond in the sum of $1,000, conditioned that it should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, and of all other laws, and further conditioned that the unadulterated portion be separated from the decomposed portion under the supervision of this department, the former released and the latter destroyed.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19588. Adulteration of butter. U. S. v. 10 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27837. I. S. No. 5378. S. No. 5801.)

Samples of butter from the shipment involved in this action having been found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of New York.

On January 25, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 10 tubs of butter at New York, N. Y., alleging that the article had been shipped in interstate commerce by the Winter Cooperative Creamery, Winter, Wis., to New York, N. Y., on or about January 18, 1932, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent of milk fat as provided by the act of March 4, 1923.

Hunter Walton & Co., New York, N. Y., interposed a claim for the product, as agent for the Winter Cooperative Creamery Co., Winter, Wis., owner, and admitted the allegations of the libel, consented to the entry of a decree, and

agreed that the product be reconditioned so that it contain at least 80 per cent of butterfat. On February 2, 1932, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $300, or the deposit of cash collateral in like amount, conditioned in part that it be reworked so that it comply with the Federal food and drugs act, and all other laws.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19589. Adulteration and misbranding of dried egg yolk. U. S. v. Joe Lowe Corporation. Tried to the court. Judgment of guilty. Fine, $75. (F. & D. No. 26567. I. S. No. 036845.)

This action was based on the interstate shipment of a quantity of an article represented to be a dried egg product, and which was found to consist in part of lactose, a milk product.

On October 10, 1931, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Joe Lowe Corporation, trading at Chicago, Ill., alleging shipment by said company, in violation of the food and drugs act, on or about May 3, 1930, from the State of Illinois into the State of Minnesota, of a quantity of an egg product that was adulterated and misbranded. The article was labeled in part: (Barrel) "Jo Lo Certified Eggs Certified Egg Products Jo Lo A A Joe Lowe Co., Incorporated, New York."

It was alleged in the information that the article was adulterated in that an added milk product, namely, a lactose-containing ingredient, had been substituted in part for a product purporting to be made exclusively from eggs, which the article purported to be.

Misbranding was alleged for the reason that the statements, "Certified Eggs" and "Certified Egg Products," borne on the label, were false and misleading; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the said statements represented that the article was made exclusively from and consisted solely of eggs; whereas it was a product made in part from and consisted of an undeclared added substance, a lactose-containing ingredient.

On March 31, 1932, the case came on for trial before the court on a plea of not guilty entered on behalf of the defendant company. After a hearing by the court, judgment of guilty was entered and a fine of $75 was imposed.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19590. Adulteration and misbranding of canned shrimp. U. S. v. 48 Cases of Canned Shrimp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27729. I. S. No. 37238. S. No. 5820.)

Examination of the canned shrimp involved in this action showed that the article was partially decomposed and that the cans contained less than the declared weight.

On February 6, 1932, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 48 cases of canned shrimp at New Orleans, La., alleging that on or about February 2, 1932, the Dorgan McPhillips Packing Corporation, New Orleans, La., delivered to the steamship company at New Orleans, a quantity of canned shrimp that was intended for export to a foreign country, and which was adulterated and misbranded in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Gulf Kist Fancy Large Shrimp Contents Wet Pack 5¾ Oz. Packed by Dorgan McPhillips Packing Corp. Mobile, Alabama."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

Misbranding was alleged for the reason that the statement on the can label, "Contents 5¾ Oz.," was false and misleading and deceived and misled the purchaser, since the said statement represented the contents of the cans as greater than was actually contained therein. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since the statement made was not correct.

On March 8, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19591. Misbranding of canned loganberries. U. S. v. 198 Cases of Canned Loganberries. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27733. I. S. Nos. 32470, 32485. S. Nos. 5821.)

Sample cans of loganberries taken from the shipment involved in this action having been found to be short weight, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of California.

On February 10, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 198 cases of canned loganberries, remaining in the original unbroken packages at San Francisco, Calif., alleging that the article had been shipped in interstate commerce, on or about January 23, 1932, by the Cleary & Hillman Packing Co., from Salem, Oreg., to San Francisco, Calif., and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Red Spot Brand Loganberries Contents 7 Lbs. Packed by Cleary & Hillman Packing Co., Salem., Ore."

Misbranding of the article was alleged in the libel for the reason that the statement on the can label, "Contents 7 Lbs.," was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was not correct.

On March 2, 1932, the Cleary & Hillman Packing Co., Salem, Oreg., having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $500, conditioned in part that it should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, and all other laws, and further conditioned that it be made to comply with the law under the supervision of this department.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19592. Adulteration and misbranding of canned blackberries. U. S. v. 200 Cases of Canned Blackberries. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27806. I. S. No. 32497. S. No. 5886.)

Examination of the canned blackberries involved in this action showed that the product was in part moldy, and that the cans contained less than the declared weight.

On March 2, 1932, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid, a libel praying seizure and condemnation of 200 cases of canned blackberries, remaining in the original unbroken packages at San Francisco, Calif., alleging that the article had been shipped in interstate commerce, on or about February 13, 1932, by the General Grocery Co., from Portland, Oreg., to San Francisco, Calif., and charging adulteration and misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Wellman Foods Solid Pack Pie Blackberries * * * 6 lbs. 10 oz. Wellman Peck & Co., Distributors, San Francisco, California.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed vegetable substance.

Misbranding was alleged for the reason that the statement on the label, "6 lbs. 10 oz.," was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the quantity stated was incorrect.

On March 28, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

10593. Misbranding of corn chops and corn meal. U. S. v. 75 Sacks of Gristo Corn Chops, et al. Consent decrees of condemnation and forfeiture. Products released under bond. (F. & D. Nos. 27695, 27696. I. S. Nos. 41087, 41090. S. Nos. 5767, 5770.)

Samples of corn chops and corn meal taken from the shipments involved in these actions having been found to be short weight, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of of Arkansas.

On or about February 1, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of 75 sacks of corn chops and 565 sacks of corn meal at Blytheville, Ark., alleging that the articles had been shipped in interstate commerce, by the Scott County Milling Co., from Sikeston, Mo., to Blytheville, Ark., in part on or about December 9, 1931, and in part on or about January 6, 1932, and charging misbranding in violation of the food and drugs act as amended. The articles were labeled in part: "100 Pounds Net. Gristo Corn Chops Manufactured by Scott County Milling Company, Sikeston, Oran, Dexter, Mo." and "BMMCo Cream Meal * * * 10 Lbs. Net Weight When Packed."

It was alleged in the libels that the articles were adulterated in that the statements, "100 Pounds Net" and "10 Lbs. Net," appearing on the respective labels, were false and misleading and deceived and misled the purchaser, since the sacks containing the said corn chops contained less than 100 pounds net, and the sacks containing the corn meal contained less than 10 pounds net.

Misbranding was alleged for the further reason that the articles were food in package form and the quantities of the contents were not plainly and conspicuously marked on the outside of the packages, since the statements made were not correct.

On March 25, 1932, the Scott County Milling Co., Sikeston, Mo., claimant, having admitted the allegations of the libels and having consented to the entry of decrees, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the products be released to the said claimant upon payment of costs and the execution of bonds totaling $400, conditioned as required by law. It was further ordered that the sacks be filled to the declared net weight under the supervision of this department.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19594. Adulteration of celery. U. S. v. 206 Crates of Celery. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27734. I. S. No. 52062. S. No. 5830.)

Arsenic having been found on celery taken from the shipment involved in this action, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On February 11, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 206 crates of the said celery at Chicago, Ill., alleging that the article had been shipped in interstate commerce on January 28, 1932, by the Manatee County Growers Association, Vandefipe, Fla., to Chicago, Ill., and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Mana T Brand Packed and Shipped by Manatee County Growers Association, Bradenton, Fla."

It was alleged in the libel that the article was adulterated in that it contained an added poisonous and deleterious ingredient, arsenic, in an amount which might have rendered it injurious to health.

On March 25, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19595. Adulteration and misbranding of flour. U. S. v. 3,400 Bags of Flour. Product ordered released under bond. (F. & D. No. 26486. I. S. No. 28323. S. No. 4707.)

Examination of the purported wheat flour involved in this action showed that the article contained a considerable amount of rye flour.

On July 1, 1931, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 3,400 bags of flour, remaining in the original unbroken packages at Charleroi, Pa., alleging that the article had been shipped in interstate commerce by the Gwinn Milling Co., on or about April 10, 1931,

from Columbus, Ohio, to Charleroi Pa., and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: (Sack) "Bleached 24½ Lbs. Net Superlative Silver Leaf Flour Manufactured by the Gwinn Milling Co., Columbus, Ohio."

It was alleged in the libel that the article was adulterated in that rye flour had been mixed and packed therewith so as to reduce, lower, or injuriously affect its quality or strength, and had been substituted partly for the article.

Misbranding was alleged for the reason that the statement on the labels, "Flour," was false and misleading and deceived and misled the purchaser.

On March 7, 1932, the Fox Grocery Co. entered an appearance and claim for the 892 bags of flour that had been seized and admitted the allegations of the libel and consented to the entry of a decree of condemnation and forfeiture. On March 12, 1932, a decree was entered ordering that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $500, conditioned that it should not be sold or disposed of contrary to the laws of the United States or of any State, Territory, District, or insular possession, and further conditioned that it be repacked and sold as animal feed.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19596. Misbranding of butter. U. S. v. Lange Creamery Co. Plea of guilty. Fine, $50 and costs. (F. & D. No. 27466. I. S. Nos. 35054, 35055.)

This action was based on the interstate shipment of quantities of butter, samples of which were found to be short of the declared weight.

On February 13, 1932, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Lange Creamery Co., a corporation, trading at Salina, Kans., alleging shipment by said company, in violation of the food and drugs act as amended, on or about June 8, 1931, from the State of Kansas into the State of Louisiana, of quantities of butter that was misbranded. A portion of the article was contained in packages labeled in part: "Pet Butter * * * One Pound Net." The remainder of the said article was inclosed in wrappers, labeled in part: "1 Lb. Net Weight."

It was alleged in the information that the article was misbranded in that the statements, "One Pound Net" and "1 Lb. Net Weight," borne on the packages and wrappers, were false and misleading, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the packages and wrappers contained less than 1 pound net of butter. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since the statements made were incorrect.

On March 9, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $50 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19597. Adulteration of celery. U. S. v. 186 Crates of Celery. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27738. I. S. No. 43882. S. No. 5831.)

Arsenic having been found on samples of celery taken from the shipment involved in this action, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of New York.

On February 10, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 186 crates of the said celery at New York, N. Y., alleging that the article had been shipped in interstate commerce on or about February 8, 1932, by the Palmer Farms Growers Cooperative Association, from Sarasota, Fla., to New York, N. Y., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it injurious to health.

On March 2, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19598. Adulteration and misbranding of jellies and ketchup, and misbranding of pickles. U. S. v. Alvin A. Baumer (Baumer's Food Products Co.). Plea of guilty. Fine, $100. (F. & D. No. 26623. I. S. Nos. 17676, 17677, 17678, 17679, 19665, 19695, 19696, 26742.)

This case was based on the interstate shipment of quantities of apple pectin jellies, apple, strawberry, pineapple, and peach flavors; tomato ketchup; and sweet and sour gherkin pickles. Examination showed that the jellies contained but negligible amounts, if any, of the juices of the respective fruits, also that the pineapple jelly was artificially colored and the strawberry and peach jellies were artificially colored and flavored. All of the said jellies were found to contain undeclared benzoate of soda. Examination of the tomato ketchup showed that it was artificially colored, also that the label bore the plain and conspicuous statement "8 Ozs.," while the bottles contained less than 8 ounces, which mislabeling was not corrected by the faint, inconspicuous, penciled statement "6 Ozs.," appearing on the label. The gherkin pickles also were found to be short of the declared weight, 6 ounces.

On March 14, 1932, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Alvin A. Baumer, trading as Baumer's Food Products Co., New Orleans, La., charging violation of the food and drugs act as amended. It was alleged in the information that on or about November 8, 1930, the defendant had shipped from the State of Louisiana into the State of Texas, quantities of jellies and a quantity of tomato ketchup, all of which were adulterated and misbranded; that the said defendant had shipped on or about October 10, 1932, from Louisiana into Texas, and on or about June 12, 1931, from Louisiana into Mississippi, quantities of sweet and sour gherkin pickles that were misbranded. The jellies were labeled in part: "Baumer's Crystal Brand Quality Jelly Apple Pectin Jelly Apple [or "Strawberry" or "Pineapple" or "Peach"] Manufactured and Packed by Baumer's Food Products Co., New Orleans, La." The ketchup was labeled in part: "Crystal 8 Ozs. Tomato Ketchup ["6 Ozs." inconspicuously marked in pencil on label] * * * Baumer's Food Products Co., New Orleans, La." The pickles were labeled in part: "6 Ozs. Crystal Brand Sweet [or "Sour"] Gherkin Pickles Baumer's Food Products Co., New Orleans, La."

Adulteration of the apple jelly was alleged in the information for the reason that apple pectin containing no apple flavor and but a slight and inappreciable amount, if any, of apple juice, but containing undeclared sodium benzoate, had been substituted for a product composed of apple pectin and a substantial amount of apple juice, which the article purported to be. Adulteration of the strawberry, pineapple, and peach jellies was alleged for the reason that apple pectin containing no natural flavor derived from the fruit and no appreciable amount, if any, of strawberry, pineapple, or peach juices, or fruit, but containing undeclared artificial color and undeclared sodium benzoate—the strawberry and peach jellies also containing artificial flavor—had been substituted for products composed of apple pectin and substantial amounts of fruit or fruit juices, which the articles purported to be. Adulteration of the said strawberry and peach jellies was alleged for the further reason that they were mixed with and contained artificial color and flavor in a manner whereby damage or inferiority was concealed. Adulteration of the pineapple jelly was alleged for the further reason that it was artificially colored in a manner whereby its damage or inferiority was concealed. Adulteration of the tomato ketchup was alleged for the reason that a substance, artificially colored tomato ketchup, had been substituted for plain and naturally colored tomato ketchup, which the article purported to be.

Misbranding of the jellies was alleged for the reason that the statements, "Apple Pectin Jelly Apple," "Apple Pectin Jelly Strawberry," "Apple Pectin Jelly Pineapple," and "Apple Pectin Jelly Peach," borne on the jar labels, were false and misleading, and for the further reason that the articles were labeled as aforesaid so as to deceive and mislead the purchaser; since the said statements represented that the articles contained substantial amounts of fruit or fruit juices, and were naturally flavored and colored; whereas the articles contained but little if any fruit or fruit juices, they contained undeclared sodium benzoate, and the strawberry, pineapple, and peach jellies were artificially colored and flavored. Misbranding of the jellies was alleged for the further reason that they were imitations of other articles. Misbranding of the tomato ketchup was alleged for the reason that the statements, "Tomato Ketchup" and "8 Ozs.," borne on the bottle label, were false and misleading,

and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the said statements represented that the article was plain and naturally colored tomato ketchup and that the bottles each contained 8 ounces thereof; whereas the article was artificially colored tomato ketchup, and the bottles contained less than 8 ounces thereof. Misbranding of the said tomato ketchup was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, in that the statement "6 Ozs.," faintly marked in pencil, was not a plain and conspicuous statement of the quantity of the contents, since the figure "6" was almost illegible, and the statement "8 Ozs.," also marked on the package, was a plain and conspicuous, incorrect statement. Misbranding of the gherkin pickles was alleged for the reason that the statement "6 Ozs," borne on the bottle label, was false and misleading, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the said bottles contained less than 6 ounces of the article. Misbranding of the gherkin pickles was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the bottles contained less than so declared.

On March 24, 1932, the defendant entered a plea of guilty to the information, and the court imposed a fine of $100.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19599. Adulteration of walnut meats. U. S. v. 14 Boxes of Walnut Meats. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27730. I. S. No. 52012. S. No. 5817.)

Samples of walnut meats from the interstate shipment involved in this action having been found to be decomposed and wormy, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Wisconsin.

On February 8, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 14 boxes of walnut meats, remaining in the original unbroken packages at Milwaukee, Wis., alleging that the article had been shipped in interstate commerce, on or about July 29, 1931, from Boston, Mass., to Milwaukee, Wis., by the Northeastern Importing Co., of Boston, Mass., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, or putrid vegetable substance.

On March 15, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19600. Adulteration and misbranding of butter. U. S. v. Mutual Creamery Co. Plea of guilty. Fine, $50 and costs. (F. & D. No. 27457. I. S. Nos. 22152, 22199.)

This action was based on the interstate shipment of quantities of butter, samples of which were found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress, and a portion of which was also found to be short weight.

On February 9, 1932, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Mutual Creamery Co., a corporation trading at Seattle, Wash. It was alleged in the information that on or about May 1 and May 11, 1931, the defendant company had delivered for shipment from Seattle, Wash., to Alaska, quantities of butter that was adulterated and misbranded in violation of the food and drugs act as amended. A portion of the article was labeled: "Maid o'Clover Four-In-One Butter * * * One Pound Net Pasteurized Creamery Butter Manufactured and Distributed by Mutual Creamery Company, U. S. A." The remainder was labeled: "Maid O'Clover Butter * * * Guaranteed by Mutual Creamery Co., Seattle, U. S. A."

Adulteration of the article was alleged in the information for the reason that a product which contained less than 80 per cent by weight of milk fat had

been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat, as prescribed by the act of March 4, 1923, which the article purported to be.

Misbranding was alleged for the reason that the statement "Butter," appearing on the labels, and the statement "One Pound Net," appearing on the label of a portion of the article, were false and misleading, since the said statement represented that the article was butter, a product which should contain not less than 80 per cent by weight of milk fat, and that the packages containing a portion thereof each contained 1 pound net of the article; whereas the product did not contain 80 per cent by weight of milk fat but did contain a less amount, and the packages in the said portion did not contain 1 pound net but did contain less than 1 pound net.

On March 18, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $50 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19601. Adulteration and misbranding of canned shrimp. U. S. v. 25 Cases of Canned Shrimp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27410. I. S. No. 12641. S. No. 5598.)

Samples of canned shrimp involved in this action were found to be decomposed. The cans were slack filled and were not labeled to show that fact as required by law.

On December 21, 1931, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 25 cases of the said canned shrimp, remaining in the original unbroken packages at Portland, Oreg., alleging that the article had been shipped in interstate commerce by the Nassau Packing Co., from Jacksonville, Fla., on or about November 11, 1913 (1931), and charging adulteration and misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Camarones Bella Cubana * * * The Nassauville Packing Co., Nassauville, Florida."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

Misbranding was alleged for the reason that the article fell below the standard of fill of container promulgated by the Secretary of Agriculture for such canned food, in that the entire contents occupied less than 90 per cent of the volume of the cans and the label did not bear a plain and conspicuous statement prescribed by the Secretary, indicating that it fell below such standard.

On February 8, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19602. Adulteration of fish (bluefins). U. S. v. 5 Boxes of Fish, et al. Default decrees of destruction entered. (F. & D. Nos. 27769, 27770. I. S. Nos. 47797, 52868. S. Nos. 5860, 5861.)

Examination of the fish in the shipments involved in these actions showed that the product was infested with worms.

On February 20, 1932, the United States attorney for the Southern District of Ohio, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of seven boxes of fish (bluefins) at Cincinnati, Ohio, alleging that the article had been shipped in interstate commerce by Sam Johnson & Son's Fisheries (Inc.), from Duluth, Minn., on or about February 15, 1932, and charging adulteration in violation of the food and drugs act.

It was alleged in the libels that the article was infested with triaenophori, and was adulterated in that it consisted in part of a filthy, and putrid animal substance, and in that it consisted of portions of animals unfit for food.

On February 20, 1932, no claim having been entered for the property, judgments were entered ordering that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19603. Adulteration of tomato catsup. U. S. v. 50 Cases of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27574. I. S. No. 12616. S. No. 5523.)

Samples of canned tomato catsup from the shipment herein described having been found to contain excessive mold, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Washington.

On December 21, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 50 cases of the said tomato catsup, remaining in the original unbroken packages at Walla Walla, Wash., alleging that the article had been shipped in interstate commerce by the Rocky Mountain Packing Corporation from Murray, Utah, on or about August 14, 1931, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Royal Red Brand Choice Catsup * * * Distributed by Van Alen Canning Corporation, Ogden & Tremonton, Utah."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed vegetable substance.

On February 19, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19604. Adulteration of chestnuts. U. S. v. 4 Barrels of Chestnuts. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27273. I. S. No. 45065. S. No. 5459.)

Samples of chestnuts from the shipment herein described having been found to be partly moldy and decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On November 25, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 4 barrels of chestnuts at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about October 22, 1931, by Ettore Penna, from New York, N. Y., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed vegetable substance.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19605. Adulteration of walnuts. U. S. v. 10 Boxes of Walnuts. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27392. I. S. No. 45474. S. No. 5589.)

The walnuts in the shipment involved in this action having been found to contain an excessive amount of inedible nuts, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On December 18, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 10 boxes of walnuts at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about September 5, 1931, by the Boston Terminal Refrigerating Co., from Boston, Mass., to Chicago, Ill., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid vegetable substance.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19606. Adulteration of dried black figs. U. S. v. 47 Boxes of Dried Black Figs. Default decree of destruction entered. (F. & D. No. 27602. I. S. No. 31964. S. No. 5632.)

Samples of dried black figs taken from the interstate shipments involved in this action were found to be partially decomposed and insect-infested.

On December 23, 1931, the United States attorney for the District of Utah, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 47 boxes of dried black figs, remaining in the original unbroken packages at Salt Lake City, Utah, alleging that the article had been shipped in interstate commerce by A. Ghianda, from Oroville, Calif., on or about November 23 and December 5, 1931, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Shasta Brand Fancy Black Mission Figs, A. Ghianda, Thermalito, California."

It was alleged in the libel that the article was adulterated in that it consisted wholly or in part of a filthy, decomposed, or putrid vegetable substance.

On February 20, 1932, no claimant having appeared for the property, judgment was entered ordering that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19607. Adulteration and misbranding of buckwheat flour. U. S. v. 24⅞ Cases of Buckwheat Flour. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27207. I. S. No. 40467. S. No. 5374.)

Examination of samples of alleged buckwheat flour from the shipment herein described showed that the article consisted in part of wheat flour.

On November 5, 1931, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 24⅞ cases of the said product at Chicago, Ill., alleging that the article had been shipped in interstate commerce by the William Hayden Milling Co., from Tecumseh, Mich., on or about October 15, 1931, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: (Package) "Iga Brand Self Rising Buckwheat Flour * * * Packed for Independent Grocers Alliance Distributing Co., Chicago, Illinois." The words "Buckwheat Flour" appeared on the principal labels and repeatedly on the side panels, and on one side panel there appeared the statement, "A carefully blended mixture of specially processed Buckwheat Flour and strong Winter wheat flour."

It was alleged in the libel that the article was adulterated in that wheat flour had been substituted for buckwheat flour, which the article purported to be.

Misbranding was alleged for the reason that the statement on the label, "Buckwheat Flour," in large, conspicuous type was false and misleading, and deceived and misled the purchaser when applied to the article which consisted in large part of wheat flour, which wheat flour was declared in small and practically unnoticeable type on the side panel and not in type of the same size as the words "Buckwheat Flour." Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article, to wit, buckwheat flour, which it purported to be.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19608. Adulteration of dried black figs. U. S. v. 23 Boxes of Dried Black Figs. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27350. I. S. No. 22526. S. No. 5531.)

Samples of dried black figs taken from the interstate shipment covered by this action were found to be insect-infested and decomposed.

On December 10, 1931, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 23 boxes of the said dried black figs, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped in interstate commerce by the Joe Mangini Draying Co. (Inc.), from San Francisco, Calif., on or about October 31, 1931, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Box) "Black Mission Figs Grown and Packed by T. M. Atwood, Oroville, Calif."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy and decomposed vegetable substance.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19609. Adulteration of pecans. U. S. v. 259 Sacks of Pecans. Product ordered released under bond to be sorted and bad portion destroyed. (F. & D. Nos. 27691, 27692. I. S. Nos. 41146 to 41150, incl., 41201. S. No. 5768.)

Samples of pecans from the shipments herein described having been found to be decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Missouri.

On January 25, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 259 sacks of pecans, remaining in the original unbroken packages at St. Louis, Mo., alleging that the article had been shipped in interstate commerce by the Woodson Pecan Co., from Albany, Ga., in part on or about December 5, 1931, and in part on or about December 16, 1931, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed vegetable substance.

On February 24, 1932, the Woodson Pecan Co., Albany, Ga., having appeared as claimant for the property and having admitted the allegations of the libel, and the court having found that the unfit portion of the product might be separated from the portion suitable for human consumption, a decree was entered ordering release of the product to the claimant upon the execution of a bond in the sum of $500, conditioned in part that it should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, and all other laws, and further conditioned that the unfit portion be destroyed and that claimant pay costs of the proceedings.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19610. Adulteration of rabbits. U. S. v. 3 Drums of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27629. I. S. No. 45323. S. No. 5672.)

This action was based on the shipment of three drums of slaughtered rabbits. Samples examined were found to be partially decomposed.

On January 6, 1932, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of the said three drums of rabbits at Chicago, Ill., alleging that the article had been shipped on or about December 28, 1931, by Mason & Somerfeld, from Brunswick, Mo., and had been transported from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19611. Adulteration of rabbits. U. S. v. 4 Barrels of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27636. I. S. No. 45324. S. No. 5673.)

This action involved the shipment of four barrels of slaughtered rabbits. Samples examined from the shipment were found to be partially decomposed and diseased.

On January 6, 1932, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of the said four barrels of rabbits at Chicago, Ill., alleging that the article had been shipped by the Baring Produce Co., from Baring, Mo., on or about December 28, 1931, and had been transported from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19612. Adulteration of rabbits. U. S. v. 1 Barrel of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27601. I. S. No. 47912. S. No. 5643.)

This action involved the shipment of a barrel of slaughtered rabbits. Samples taken from the shipment were found upon examination to be decomposed and diseased.

On December 28, 1931, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of the said barrel of rabbits at Chicago, Ill., alleging that the article had been shipped by the Bethany Ice & Cold Storage Co., from Bethany, Mo., on or about December 8, 1931, and had been transported from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19613. Adulteration of rabbits. U. S. v. 85 Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27693. I. S. No. 48077. S. No. 5781.)

This action involved the shipment of 85 slaughtered rabbits, samples of which were found to be decomposed.

On February 1, 1932, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of the said 85 rabbits at Boston, Mass., alleging that the article had been shipped by the Sunflower Poultry Packers Association, from Emporia, Kans., on or about December 23, 1931, and had been transported from the State of Kansas into the State of Massachusetts, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

On February 9, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19614. Adulteration of cabbage. U. S. v. 21,500 Pounds of Cabbage. Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 27737. I. S. No. 52608. S. No. 5826.)

Arsenic having been found on cabbage taken from the shipment involved in this action, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Tennessee.

On February 10, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 21,500 pounds of cabbage at Memphis, Tenn., alleging that the article had been shipped by George A. Arts, from Robstown, Tex., on or about January 27, 1932, and had been transported from the State of Texas into the State of Tennessee, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it injurious to health.

On February 12, 1932, George A. Arts, Robstown, Tex., having entered an appearance and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal. It was further ordered by the court that the said claimant pay all costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19615. Misbranding of butter. U. S. v. Staunton Creamery (Inc.). Plea of guilty. Fine, $25. (F. & D. No. 27426. I. S. No. 15917.)

This action was based on the interstate shipment of a lot of butter, consisting of alleged quarter-pound cubes packed in cartons represented to contain 1 pound. Samples examined were found to contain less than the labeled weight.

On December 7, 1931, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Staunton Creamery (Inc.), Staunton, Va., alleging shipment by said company, in violation of the food and drugs act as amended, on or about June 29, 1931, from the State of Virginia into the State of North Carolina, of a quantity of butter that was misbranded. The article was labeled in part: (Carton) "Eureka Brand Butter Quarters One Pound Net * * * Staunton Creamery Inc. Staunton, Virginia;" (parchment wrapper on cubes) "4 Ounces Net Weight."

It was alleged in the information that the article was misbranded in that the statements, to wit, "One Pound Net," borne on the cartons, and "4 Ounces Net Weight," borne on the parchment wrappers were false and misleading, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser; since the cartons contained less than 1 pound net and the parchment wrappers inclosed less than 4 ounces net of the said article. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since the statements made were incorrect.

On March 21, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $25.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19616. Adulteration of canned shrimp. U. S. v. 40 Cases of Canned Shrimp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27221. I. S. No. 45259. S. No. 5396.)

Samples of canned shrimp from the shipment herein described having been found to be decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Missouri.

On November 9, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 40 cases of canned shrimp, remaining in the original unbroken packages at St. Louis, Mo., alleging that the article had been shipped by the Lone Star Fish & Oyster Co., Corpus Christi, Tex., on or about October 21, 1931 (1930), and had been transported from the State of Texas into the State of Missouri, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Texas Star Brand Shrimp."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

On February 16, 1932, no claimant having appeared for the property, judgment ment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19617. Adulteration of canned shrimp. U. S. v. 225 Cases of Canned Shrimp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27225. I. S. No. 45261. S. No. 5399.)

Samples of canned shrimp from the shipment herein described having been found to be putrid and sour, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Missouri.

On November 10, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 225 cases of canned shrimp, remaining in the original unbroken packages at St. Louis, Mo., alleging that the article had been shipped by the

DeJean Packing Co., Biloxi, Miss., on or about October 10, 1931, and had been transported from the State of Mississippi into the State of Missouri, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Rabbit Brand Shrimp A. C. L. Haase & Sons Fish Co. Distributors, St. Louis, Mo."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed and putrid animal substance.

On February 16, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19618. Adulteration and misbranding of frozen eggs and frozen egg yolks. U. S. v. Land O'Lakes Creameries (Inc.). Plea of guilty. Fine, $35. (F. & D. No. 26563. I. S. Nos. 2347, 2348, 2349, 17252.)

Samples of frozen egg yolks and frozen whole eggs, taken from the shipments on which this action was based, were found to contain added sugar.

On December 14, 1931, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Land O'Lakes Creameries (Inc.), a corporation, Minneapolis, Minn., alleging shipment by said company, in violation of the food and drugs act, on or about December 20, 1929 and June 9, 1930, from the State of Minnesota into the State of New York, and on or about October 4, 1930, from the State of Minnesota into the State of Michigan, of quantities of frozen egg yolks and frozen whole eggs that were adulterated and misbranded. Portions of the articles were labeled in part: (Cans) "Land O'Lakes Frozen Eggs Land O'Lakes Creameries, Inc., Minneapolis, Minn. Guaranteed to comply with all pure food laws * * * Yolks or [" Whole Eggs "] A portion of the article was labeled: (Can) "Land O'Lakes Frozen Eggs * * * Land O'Lakes Creameries, Inc., Minneapolis, Minn."

It was alleged in the information that the articles were adulterated in that a substance, sugar, had been mixed and packed therewith so as to lower and reduce and injuriously affect their quality and strength, and had been substituted in part for frozen egg yolks and frozen whole eggs, which the articles purported to be.

Misbranding was alleged for the reason that the respective statements, "Frozen Eggs," "Frozen Eggs, Yolks," and "Frozen Whole Eggs," appearing on the labels of the various lots, and the statement, "Guaranteed to comply with all pure food laws," also appearing on the labels of some of the lots, were false and misleading, and for the further reason that the articles were labeled as aforesaid so as to deceive and mislead the purchaser, since the said statements represented that the articles consisted of frozen eggs, frozen egg yolks, or frozen whole eggs; whereas they did not so consist, but did consist in part of added sugar, and the portions of the articles which were labeled as complying with all pure food laws did not comply with the food and drugs act of June 30, 1906.

On February 8, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $35.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19619. Adulteration of rabbits. U. S. v. 1 Barrel of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27630. I. S. No. 45322. S. No. 5674.)

This action involved a shipment consisting of a barrel of slaughtered rabbits. Samples examined were found to be partially decomposed.

On January 6, 1932, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of the said barrel of rabbits at Chicago, Ill., alleging that the article had been shipped by the Oldham Produce Co., from Bosworth, Mo., on or about December 28, 1931, and had been transported from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19620. Adulteration of rabbits. U. S. v. 92 Barrels of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27590. I. S. No. 45318. S. No. 5620.)

This action involved the shipment of 92 barrels of slaughtered rabbits. Samples taken from the shipment were found to be decomposed and diseased.

On December 28, 1931, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of the said 92 barrels of rabbits at Chicago, Ill., alleging that the article had been shipped by the Henderson Produce Co., from Monroe City, Mo., on or about December 14, 1931, and had been transported from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On February 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19621. Adulteration of slab apricots. U. S. v. 275 Boxes of Slab Apricots. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27703. I. S. No. 31348. S. No. 5789.)

Samples of slab apricots from the shipment herein described having been found to be insect-infested, moldy, and fermented, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Pennsylvania.

On February 8, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 275 boxes of slab apricots, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped by Rosenberg Bros. & Co., San Francisco, Calif., on or about January 19, 1932, and had been transported from the State of California into the State of Pennsylvania, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance.

On February 29, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19622. Adulteration of celery. U. S. v. 352 Crates of Celery. Decree ordering product released under bond. (F. & D. No. 27718. I. S. No. 50328. S. No. 5809.)

Arsenic having been found on celery taken from the shipment involved in this action, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Missouri.

On February 4, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 352 crates of the said celery, remaining in the original unbroken packages at St. Louis, Mo., alleging that the article had been shipped by the Manatee County Growers Association of Bradenton, Fla., from Vanderipe, Fla., on or about January 28, 1932, and had been transported from the State of Florida into the State of Missouri, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Mana T Brand Packed and shipped by Manatee County Growers Association, Bradenton, Florida."

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it harmful to health.

On February 20, 1932, the Manatee County Growers Association, having appeared as claimant for the property and having admitted the allegations of the libel, and the court having found that a portion of the article was fit for human consumption and could be separated from the unfit portion, judgment was entered ordering that the product be released to the claimant upon the execution of a bond in the sum of $1,000, conditioned that it should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, or other existing laws, and it was further ordered that the unfit portion be destroyed and that claimant pay costs of the proceedings.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19623. Misbranding of canned cherries. U. S. v. 25 Cases of Canned Cherries. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27673. I. S. No. 32351. S. No. 5747.)

Examination of the canned cherries involved in this action showed that the article consisted of water-packed cherries, and consequently fell below the standard promulgated by the Secretary of Agriculture for canned cherries, and was not labeled to show that it was substandard.

On January 16, 1932, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 25 cases of canned cherries, remaining in the original unbroken packages at San Francisco, Calif., alleging that the article had been shipped by the C. S. Kale Canning Co., from Everson, Wash., on or about December 12, 1931, and had been transported from the State of Washington into the State of California, and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Can) "Whatcom Brand Red Sour Pitted Cherries * * * C. S. Kale Canning Company, Everson, Washington."

It was alleged in the libel that the article was misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, since it consisted of water-packed cherries and its label did not bear a plain and conspicuous statement prescribed by the Secretary, indicating that it fell below such standard.

On February 1, 1932, Smith, Lynden & Co., San Francisco, Calif., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $64, conditioned that it be relabeled, and that it should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, and all other existing laws.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19624. Misbranding of potatoes. U. S. v. 87 Sacks of Potatoes. Product ordered released under bond to be relabeled. (F. & D. No. 27624. I. S. No. 41129. S. No. 5653.)

This action involved a shipment of potatoes, represented to be United States grade No. 1, which were found to be below grade.

On January 4, 1932, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 87 sacks of the said potatoes, remaining in the original unbroken packages at St. Louis, Mo., alleging that the article had been shipped by the Wesco Food Co., Wonewoc, Wis., on or about December 17, 1931, and had been transported from the State of Wisconsin into the State of Missouri, and charging misbranding in violation of the food and drugs act. The article was labeled in part: "U. S. Grade No. 1 Potatoes."

It was alleged in the libel that the article was misbranded in that the statement on the label, "U. S. Grade No. 1," was false and misleading and deceived and misled the purchaser, since the potatoes were not of United States grade No. 1, but were of a lower grade.

On February 17, 1932, Anthony Pupillo, trading as the Pupillo Fruit Co., having appeared as claimant for the property and having admitted the allegations of the libel, a decree was entered ordering that the product be released

to the claimant upon the execution of a bond in the sum of $200, conditioned that it be relabeled, and that it should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, and all other existing laws. It was further ordered that claimant pay the costs of the proceedings.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19625. Adulteration of celery. U. S. v. 384 Crates, et al., of Celery. Decrees of condemnation entered. Portions of product released under bond. Remainder ordered destroyed. (F. & D. Nos. 27719, 27732, 27745, 27746. I. S. Nos. 43137, 43881, 48651, 52815. S. Nos. 5813, 5827, 5835, 5841.)

These actions involved four interstate shipments of celery from Florida to Connecticut, Pennsylvania, and Ohio. Arsenic having been found on samples taken from each of the shipments, the Secretary of Agriculture reported the matter to the appropriate United States attorneys and recommended seizure under the food and drugs act.

On February 5 and February 15, 1932, libels were filed in the United States Court for the District of Connecticut against 464 crates of celery; on February 9, 1932, a libel was filed in the Eastern District of Pennsylvania against 82 cases of celery, and on February 13, 1932, a libel was filed in the Southern District of Ohio against 87 crates of celery. It was alleged in the libels that the article had been shipped by the Palmer Farms Growers Cooperative Association, of Sarasota, Fla., in part from Sarasota, Fla., on or about January 28 and February 1, 1932, and in part from Belspur, Fla., on or about February 4 and February 5, 1932; that it remained in the original unbroken packages in various lots at Philadelphia, Pa., Cincinnati, Ohio, Bridgeport, Conn., and Hartford, Conn.; and that it was adulterated in violation of the food and drugs act.

Adulteration was charged in the libels in that the article contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it injurious to health.

On February 9, 1932, Fred Morinelli, jr., Philadelphia, Pa., having appeared as claimant for the lot seized at Philadelphia, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the claimant upon payment of costs and the execution of a bond in the sum of $200, the terms of the bond requiring that the celery be reconditioned under the supervision of this department, and that it should not be sold or otherwise disposed of contrary to the laws of the United States or of any State, Territory, District, or insular possession. On February 17, 1932, the Castellini Co., Cincinnati, Ohio, having appeared as claimant for the lot seized at Cincinnati and having filed a bond in the sum of $350, a decree was entered condemning the product and ordering its release under substantially the same conditions as contained in the Philadelphia decree. On February 19, 1932, the claimant in the two libels instituted in Connecticut covering 464 crates of the product, having consented to the entry of decrees, judgments were entered condemning the lots seized at Bridgeport and Hartford, Conn., 131 crates in all, and ordering that they be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19626. Adulteration of frozen eggs. U. S. v. The Alex Wilson Co. Plea of guilty. Fine, $25. (F. & D. No. 27481. I. S. Nos. 28329, 28333, 28337.)

Samples of canned frozen eggs, taken from the shipments which formed the basis of this action, were found to be sour or stale.

On January 22, 1932, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Alex Wilson Co., a corporation, Cincinnati, Ohio, alleging shipment by said company, in violation of the food and drugs act, in various consignments, on or about September 15, 1930, December 8, 1930, and February 23, 1931, from the State of Ohio into the State of Pennsylvania, of quantities of canned frozen eggs that were adulterated. The article was labeled in part: "Wilson's Quality Whole Eggs."

It was alleged in the information that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid animal substance.

On January 22, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $25.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19627. Misbranding of olive oil. U. S. v. Mallars & Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 26684. I. S. No. 26248.)

Sample cans of olive oil taken from the interstate shipment which formed the basis of this action were found to contain less than one-half gallon of the article, the declared volume.

On October 10, 1931, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Mallars & Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the food and drugs act as amended, on or about July 16, 1930, from the State of Illinois into the State of Wisconsin, of a quantity of olive oil that was misbranded. The article was labeled in part: (Can) "Contents ½ Gallon Athlete Brand Pure Olive Oil * * * Mallars & Company, Chicago."

It was alleged in the information that the article was misbranded in that the statement "½ Gallon," borne on the can label, was false and misleading, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the cans contained less than one-half gallon of olive oil. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was incorrect.

On January 25, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $25 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19628. Adulteration of butter. U. S. v. 17 Boxes of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27829. I. S. No. 22491. S. No. 5786.)

Samples of butter taken from the shipment herein described having been found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Washington.

On January 22, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 17 boxes of butter, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped by the Enterprise City Creamery, Portland, Oreg., on or about January 18, 1932, and had been transported from the State of Oregon into the State of Washington, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent of milk fat as provided by the act of March 4, 1923.

On January 27, 1932, the Enterprise Creamery Co., of Portland, Oreg., and Perry J. Bradley, claimants, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimants upon payment of costs and the execution of a bond in the sum of $450, conditioned that it should not be sold or otherwise disposed of contrary to the Federal food and drugs act, and all other laws, and further conditioned that it be made to conform to the said food and drugs act under the supervision of this department.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19629. Adulteration of cabbage. U. S. v. 28 Hampers of Untrimmed Cabbage. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27647. I. S. No. 43102. S. No. 5690.)

Arsenic having been found on cabbage taken from the shipment herein described, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Pennsylvania.

On January 8, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 28 hampers of untrimmed cabbage, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped by J. F. Gist, Santos, Fla., on or about January 1, 1932, and had been transported from the State of Florida into the State of Pennsylvania, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it harmful to health.

On February 23, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19630. Adulteration of dates. U. S. v. 500 Cases of Dates. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27609. I. S. No. 31915. S. No. 5647.)

Samples of dates from the shipment herein described having been found to be insect-infested and filthy, the Secretary of Agriculture reported the matter to the United States attorney for the District of Colorado.

On December 29, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 500 cases of dates, remaining in the original unbroken packages at Denver, Colo., consigned by the George Segal Co. (Inc.), New York, N. Y., alleging that the article had been shipped on or about December 8, 1931, in interstate commerce from the State of New York into the State of Colorado, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance.

On January 14, 1932, the George Segal Co. (Inc.), New York, N. Y., having appeared as claimant for the property and having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of $2,000, conditioned in part that it should not be sold or otherwise disposed of contrary to the laws of the United States or the laws of the State of Colorado.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19631. Adulteration of canned salmon. U. S. v. 24 Cases of Canned Salmon. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27582. I. S. No. 46059. S. No. 5615.)

Samples of canned salmon from the shipment herein described having been found to be partly decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Middle District of Georgia.

On December 21, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 24 cases of canned salmon, remaining in the original unbroken packages at Columbus, Ga., alleging that the article had been shipped by E. H. Hamlin & Co., from Seattle, Wash., on or about November 18, 1931, and had been transported from the State of Washington into the State of Georgia, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "See Flyer Brand Alaska Pink Salmon * * * Distributed by McGovern & McGovern, Seattle, U. S. A."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

On January 9, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19632. Adulteration of rabbits. U. S. v. 1½ Barrels of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27386. I. S. No. 45317. S. No. 5587.)

Rabbits taken from the shipment herein described having been found upon examination to be decomposed and diseased, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On December 18, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of one and one-half barrels of rabbits at Chicago, Ill., alleging that the article had been shipped on or about December 10, 1931, by the Lindley Buster Produce Co., from Bucklin, Mo., and had been transported

from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On January 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19633. Adulteration of pecans. U. S. v. 480 Pounds of Pecans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27388. I. S. No. 45827. S. No. 5583.)

Samples of pecans from the shipment herein described having been found to be partially moldy, rancid, and shriveled, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Louisiana.

On December 16, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 480 pounds of pecans at New Orleans, La., alleging that the article had been shipped in interstate commerce on or about December 10, 1931, by Joseph Cornello, New Orleans, La., from Mobile, Ala., and had been transported from the State of Alabama into the State of Louisiana, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On January 19, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19634. Adulteration of dried apples. U. S. v. 200 Boxes, et al., of Dried Apples. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27594. I. S. Nos. 47165, 47166. S. No. 5621.)

Samples of dried apples from the shipment herein described having been found to be in part filthy, insect-infested, and moldy, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Louisiana.

On December 22, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 400 boxes of dried apples, remaining in the original unbroken packages at New Orleans, La., alleging that the article had been shipped by the Napa Fruit Co., Napa, Calif., on or about November 18, 1931, and had been transported from the State of California into the State of Louisiana, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On January 19, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19635. Adulteration of pecans. U. S. v. 780 Pounds of Pecans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27593. I. S. No. 45829. S. No. 5627.)

Samples of pecans from the shipment herein described having been found to be in part shriveled, moldy, rancid, and decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Louisiana.

On December 22, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 780 pounds of pecans, remaining in the original unbroken packages at New Orleans, La., alleging that the article had been shipped by Michael St. Angelo, of New Orleans, La., from Gulfport, Miss., on or about December 11, 1931, that it had been transported from the State of Mississippi

into the State of Louisiana, and that it was adulterated in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On January 19, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19636. Alleged misbranding of flour and corn meal. U. S. v. American Maid Flour Mills. Information quashed. (F. & D. No. 26606. I. S. Nos. 026996, 026998, 026999, 027000, 029990, 029991, 029992, 029995.)

This action was based on interstate shipments of four lots of flour and corn meal in sacks that were represented to contain 24 pounds of the articles. Examination showed that a large number of the sacks contained less than 24 pounds net, and that the average net weight of all sacks was less than 24 pounds.

On September 26, 1931, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the American Maid Flour Mills, a corporation, Houston, Tex., charging shipment by said company, in violation of the food and drugs act as amended, on or about February 20, 1930, from the State of Texas into the State of Louisiana, of quantities of flour and corn meal that were alleged to be misbranded. The articles were labeled in part: "24 Lbs." or "24 Lbs. Net."

It was alleged in the information that the articles were misbranded in that the statements "24 Lbs." and "24 Lbs. Net," borne on the sacks, were false and misleading, and for the further reason that the articles were labeled as aforesaid so as to deceive and mislead the purchaser, since the sacks did not contain 24 pounds of the articles, but did contain in practically all of the said sacks less than 24 pounds. Misbranding was alleged for the reason that the articles were food in package form and the quantity of the contents not plainly and conspicuously marked on the outside of the packages, since practically all of the packages contained less than declared.

On November 5, 1931, a motion to quash the information and a demurrer were filed on behalf of the defendant company. On February 6, 1932, the defendant's motion to quash was granted, the court handing down the following opinion. (Kennerly, *D. J.*): "This is a criminal information filed by the United States District Attorney against the American Maid Flour Mills, charging in six counts, under sections 1 to 15, of title 21, U. S. C. A., and particularly under paragraph 3 of section 10 of such title, the misbranding of certain sacks of flour, meal, etc., shipped in interstate commerce. It is alleged that such sacks were branded as containing each twenty-four (24) pounds, when in truth and fact they contained less, etc.

"(1) Defendant moves to quash the information, upon the ground, among others, that the statute under which the prosecution is brought violates the fifth and sixth amendments of the Federal Constitution, in that such statute, and particularly the provision as to 'reasonable variations,' constitutes a fixing by Congress of an unascertainable standard of guilt, and is inadequate to inform persons accused of criminal violations thereof, of the nature and cause of the accusation against them. That such motion is in that respect well taken, I entertain no doubt. United States *v.* Shreveport Grain, 46 Fed. (2d) 354, and cases there cited, including United States *v.* Cohen, 255 U. S. 93. Counsel for the Government strongly press upon me that the line of decisions represented by Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 86, is controlling. In disposing of this contention, I cannot do better than to point to the language of Chief Justice White in United States *v.* Cohen, supra, as follows:

"But decided cases are referred to which, it is insisted, sustain the contrary view. Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 86, 53 L. Ed. 417, 29 Sup. Ct. Rep. 220; Nash *v.* United States, 229 U. S., 373, 57 L. Ed. 1232, 33 Sup. Ct. Rep. 780; Fox *v.* Washington, 236 U. S., 273; 59 L. Ed. 573, 35 Sup. Ct. Rep. 383; Miller *v.* Strahl, 239 U. S. 426, 60 L. Ed. 364, 36 Sup. Ct. Rep. 147; Omaechevarria *v.* Idaho, 246 U. S. 343, 62 L. Ed. 763, 38 Sup. Ct. Rep. 323. We need not stop to review them, however, first, because their inappositeness is necessarily demonstrated when it is observed that, if the contention as to their effect were true, it would result, in view of the text of the statute, that no standard whatever was required, no information as to the nature and cause of the

accusation was essential and that it was competent to delegate legislative power, in the very teeth of the settled significance of the fifth and sixth amendments and of other plainly applicable provisions of the Constitution; and second, because the cases relied upon all rested upon the conclusion that, for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded. Indeed, the distinction beween the cases relied upon and those establishing the general principle to which we have referred, and which we now apply and uphold as a matter of reason and authority, is so clearly pointed out in decided cases that we deem it only necessary to cite them. International Harvester Co. *v.* Kentucky, 234 U. S. 216, 221; Collins *v.* Kentucky, 234 U. S. 634, 637; American Seeding Machine Co. *v.* Kentucky, 236 U. S. 660, 662; and see United States *v.* Pennsylvania R. R. Co., 242 U. S. 208, 237–238.

"(2) Defendant, in like manner, attacks the information because of the provisions of paragraph 3 of section 10, permitting the fixing of tolerances and exemptions (and possibly of variations) by rules and regulations promulgated by the Secretaries of the Treasury, Agriculture, and Commerce under section 3 of title 21. There is no allegation in the information of the promulgation of, nor the violation by defendant of, any such rules and regulations. The only charge is a violation of the statute. Defendant, therefore, cannot raise this point on motion to quash.

"(3) Defendant also demurs to the information, upon the ground that it is vague, indefinite, insufficient and fails to state an offense under the laws of the United States. I think if the statute in question is valid, the information is sufficient. If defendant desired more detailed information regarding the offense with which it is charged, its remedy was to call for bill of particulars.

"It seems unnecessary to discuss the other questions raised. The motion to quash will, for the reason stated, be granted."

The information was dismissed in accordance with the above opinion.

ARTHUR M. HYDE, Secretary of Agriculture.

19637. Adulteration of salmon. U. S. v. 40 Cases, et al., of Canned Salmon. Consent decrees of condemnation. Product released under bond. (F. & D. Nos. 27398, 27633, 27634, 27635. I. S. Nos. 42914, 42918, 42919, 42920. S. Nos. 5601, 5675, 5676, 5677.)

Samples of canned salmon taken from the interstate shipments involved in these actions were found to be tainted or stale.

On December 19, 1931, and January 4, 1932, the United States attorney for the Middle District of Pennsylvania, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of 164 cases of canned salmon, remaining in the original unbroken packages in part at Nanticoke, Pa., and in part at Scranton, Pa., alleging that the article had been shipped by Libby, McNeill & Libby, from Seattle, Wash., on or about September 26 and October 15, 1931, and had been transported from the State of Washington into the State of Pennsylvania and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Happy-Vale Brand Pink Salmon * * * Packed for Emery Food Co., Chicago."

It was alleged in the libels that the article was adulterated in that it consisted in part of a decomposed animal substance.

The Emery Food Co., Chicago, Ill., entered an appearance and claim admitting the material allegations of the libels and consenting to the entry of a decree. On February 5, 1932, judgment of condemnation was entered and it was ordered by the court that the product be delivered to the claimant, upon the execution of bonds totaling $840. The decrees further ordered that the claimant make a separation of the good and bad salmon; that the portion segregated as good be submitted to this department for final determination and that all salmon so determined to be good might be released unconditionally; that the portion determined by this department to be bad should be disposed of in manner not contrary to the provisions of the food and drugs act; and that claimant pay all costs. On May 26, 1932, the decrees were amended to permit shipment of the goods to Seattle, Wash., there to be segregated in accordance with the terms of the decrees.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19638. Adulteration and misbranding of butter. U. S. v. Sunlight Creameries. Plea of guilty. Fine, $5. (F. & D. No. 27461. I. S. No. 14477.)

This action was based on an interstate shipment of butter, samples from which were found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress for butter.

On January 6, 1932, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Sunlight Creameries, a corporation, trading at Washington Court House, Ohio, alleging shipment by said company, in violation of the food and drugs act, on or about December 24, 1930, from the State of Ohio into the State of Georgia, of a quantity of butter that was adulterated and misbranded. The article was labeled in part: "Sunlight Quarters Sunlight Creamery Butter."

It was alleged in the information that the article was adulterated in that a product which contained less than 80 per cent by weight of milk fat had been substituted for a product which should contain not less than 80 per cent by weight of milk fat as prescribed by the act of March 4, 1923, which the article purported to be.

Misbranding was alleged for the reason that the statement "Butter," borne on the packages containing the article, was false and misleading, since the said statement represented that the article was butter, namely, a product which should contain not less than 80 per cent by weight of milk fat as prescribed by law, whereas it contained less than 80 per cent by weight of milk fat.

On March 31, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $5.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19639. Adulteration of cabbage. U. S. v. 425 Hampers of Cabbage. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27619. I. S. No. 42974. S. No. 5660.)

Arsenic having been found on samples of cabbage taken from the shipment herein described, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Pennsylvania.

On December 29, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 425 hampers of cabbage, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped by H. W. Tucker, Santos, Fla., on or about December 22, 1931, and had been transported from the State of Florida into the State of Pennsylvania, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, namely, arsenic, which might have rendered it harmful to health.

On January 18, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19640. Adulteration of cabbage. U. S. v. 405 Half Crates of Cabbage. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27399. I. S. No. 30625. S. No. 5604.)

Arsenic and lead having been found on samples of cabbage taken from the shipment herein described, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of New York.

On or about December 21, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 405 half crates of cabbage, in possession of the carrier at Harlem River yards, New York, N. Y. It was alleged in the libel that the article had been shipped to Providence, R. I., on or about December 8, 1931, by the South Carolina Produce Association, from Charleston, S. C., that it had been reshipped to New York, N. Y., and that it was adulterated in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that it contained added poisonous or deleterious ingredients, arsenic and lead, which might have rendered it injurious to health.

On January 9, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19641. Adulteration of walnuts. U. S. v. 64 Sacks of Walnuts. Consent decree entered ordering product released under bond. (F. & D. No. 27611. I. S. No. 19740. S. No. 5630.)

Samples of walnuts in shell taken from the shipment herein described having been found to be moldy, rancid, shriveled, and insect-damaged, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Texas.

On December 30, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 64 sacks of walnuts, remaining in the original packages at Fort Worth, Tex., alleging that the article had been shipped by the Whittier Walnut Packing Co., Whittier, Calif., on or about October 31, 1931, and had been transported from the State of California into the State of Texas, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

Leonard Bros., a Texas corporation, entered an appearance as claimant for the property and admitted the allegations of the libel, consented to the entry of a decree, and filed a bond conditioned that costs be paid by claimant, and that the product should not be sold or otherwise disposed of contrary to the provisions of the Federal food and drugs act, or the laws of any State, Territory, District, or insular possession. On January 16, 1932, the court ordered that the product be delivered to the claimant upon the conditions imposed by the said bond.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19642. Adulteration of rabbits. U. S. v. 1 Barrel of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27361. I. S. No. 45312. S. No. 5564.)

Samples of rabbits from the shipment herein described having been found to be decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On December 14, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of one barrel of rabbits at Chicago, Ill., alleging that the article had been shipped by Hale Stanley, on or about December 7, 1931, from Bosworth, Mo., and had been transported from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On January 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19643. Adulteration of cabbage. U. S. v. 400 Hampers of Cabbage. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27651. I. S. No. 43104. S. No. 5699.)

Arsenic having been found on samples of cabbage taken from the shipment herein described, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Pennsylvania.

On January 9, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 400 hampers of cabbage, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped by the Manatee County Growers Association, Ruskin, Fla., on or about January 2, 1932, and had been transported from the State of Florida into the State of Pennsylvania, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient which might have rendered it harmful to health, namely, arsenic.

On January 11, 1932, the Manatee County Growers Association, Ruskin, Fla., having appeared as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant to be reconditioned under the supervision of this department, upon payment of costs and the execution of a bond in the sum of $500, conditioned in part that it should not be sold or otherwise disposed of contrary to the laws of the United States or any State, Territory, District, or insular possession.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19644. Adulteration of rabbits. U. S. v. 1 Case of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27360. I. S. No. 45313. S. No. 5562.)

Samples of rabbits from the shipment herein described having been found to be decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On December 14, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of one case of rabbits at Chicago, Ill., alleging that the article had been shipped by the Stanley Produce Co., on or about December 7, 1931, from Mendon, Mo., and had been transported from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On January 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19645. Adulteration of tomato catsup. U. S. v. 1,540 Cases of Tomato Catsup. Default decree of destruction entered. (F. & D. No. 27650. I. S. No. 44264. S. No. 5599.)

Samples of tomato catsup from the shipment herein described having been found to contain excessive mold, the Secretary of Agriculture reported the matter to the United States attorney for the District of Minnesota.

On January 11, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 1,540 cases of tomato catsup, remaining in the original unbroken packages at Minneapolis, Minn., alleging that the article had been shipped by the Wm. Craig Canning Co., from Five Points, near Ogden, Utah, on or about October 14, 1930, and had been transported from the State of Utah into the State of Minnesota, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Craig's Perfection Brand Tomato Catsup."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed vegetable substance unfit for food.

On March 1, 1932, no claimant having appeared for the property, judgment was entered ordering that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19646. Adulteration of cabbage. U. S. v. 441 Packages of Cabbage. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27376. I. S. No. 42953. S. No. 5577.)

Arsenic having been found on samples of cabbage taken from the shipment herein described, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Pennsylvania.

On December 14, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 441 packages of cabbage, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped by C. M. Gibson, from Meggett, S. C., on or about December 7, 1931, and had been trans-

ported from the State of South Carolina into the State of Pennsylvania, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, to wit, arsenic.

On January 4, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19647. Adulteration of cabbage. U. S. v. 423 Hampers, et al., of Cabbage. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 27377, 27384. I. S. Nos. 43656, 43659. S. Nos. 5576, 5586.)

Arsenic having been found on samples of cabbage taken from the shipments herein described, the Secretary of Agriculture reported the matter to the United States attorney for the District of New Jersey.

On December 14 and December 15, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of 858 hampers of cabbage, alleging that the article had been shipped on or about December 8 and December 9, 1931, by C. E. Gibson, from Normans (Meggett), S. C., consigned to New York, N. Y., that it remained unsold in possession of the carrier at Jersey City, N. J., and that it was adulterated in violation of the food and drugs act.

It was alleged in the libels that the article was adulterated in that it contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it injurious to health.

On January 19, 1932, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19648. Adulteration of pecans in shell. U. S. v. 13 Sacks of Pecans in Shell. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27389. I. S. No. 45826. S. No. 5584.)

Samples of pecans in shell from the shipment herein described having been found to be partially moldy, rancid, and shriveled, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Louisiana.

On or about December 17, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 13 sacks of pecans in shell, remaining in the original unbroken packages at New Orleans, La. On December 18, 1931, the libel was amended. It was alleged in the libel as amended that the article had been shipped by Angelo St. Angelo and Joseph Grego, New Orleans, La., from Mobile, Ala., on or about December 7, 1931, that it had been transported in interstate commerce from the State of Alabama into the State of Louisiana, and that it was adulterated in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On January 19, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19649. Adulteration of rabbits. U. S. v. 70 Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27378. I. S. No. 45314. S. No. 5570.)

The rabbits in the interstate shipment herein described having been found to be partially decomposed and diseased, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On December 14, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 70, more or less, rabbits at Chicago, Ill., alleging that the article had been shipped by Lyle Bloom, from Quinn, S. Dak., on or about December 7, 1931, and had been transported from the State of South Dakota into the State of Illinois, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On January 11, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19650. Adulteration of rabbits. U. S. v. 4 Barrels of Rabbits. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27662. I. S. No. 43229. S. No. 5740.)

Rabbits taken from the consignment herein described having been found to be decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of New York.

On January 14, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of four barrels of rabbits, remaining in the original unbroken packages at Buffalo, N. Y., alleging that the article had been shipped by the Farmers Exchange, Mount Moriah, Mo., on or about December 17, 1931, and had been transported from the State of Missouri into the State of New York, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

On February 8, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

[1] Contains a decision of the court.

[1] Contains a decision of the court.

U. S GOVERNMENT PRINTING OFFICE: 1933

N. J., F. D. 19651–19652 Issued January, 1933

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the food and drugs act]

19651–19652

N. J., F. D. 19651–19652 Issued January, 1933

19651. Misbranding and alleged adulteration of B. & M. U. S. v. 17 Large Bottles, et al., of B. & M. Hearing on exceptions to libel. Court sustains claimant's exceptions to charges that article was adulterated, sustains further exceptions to libel on contention that statements, alleged to be false and misleading, concerning strength of article appearing in booklet contained within the package, does not constitute misbranding, but overruled claimant's exception to the remaining charge. Tried to a jury on misbranding charge based on false and fraudulent curative and therapeutic claims. Verdict for the Government. Decree of condemnation, forfeiture, and destruction. (F. & D. Nos. 26900, 26905. I. S. Nos. 28871, 28872, 28875, 28876. S. Nos. 5067, 5095.)

These cases involved shipments of a drug preparation labeled "B. & M. Formerly Called B. & M. External Remedy." The cartons, the bottle labels, and a booklet shipped with the article bore extensive curative and therapeutic claims. Investigation by this department showed that the article contained no ingredient or combination of ingredients capable of producing the curative and therapeutic effects claimed. On the cover and first page of the booklet the article was described as an "Antiseptic." The booklet also contained statements supported by tables and plates purporting to prove its penetrating and germ-destroying properties. Tests showed that it would not destroy germs in the tissues and organs when used externally or by inhalation in accordance with instructions contained in the booklet.

On August 22, 1931, the United States attorney for the District of Maryland, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid two libels praying seizure and condemnation of a total of 43 large bottles and 95 small bottles of the said B. & M., remaining in the original unbroken packages at Baltimore, Md. The libels charged that the article had been shipped from Boston, Mass., by the F. E. Rollins Co. to Baltimore, Md., a portion having been shipped on or about August 1, 1931, and the remainder on or about August 6, 1931, and that it was adulterated and misbranded in violation of the food and drugs act as amended.

Chemical analyses of samples of the article by this department showed that it consisted essentially of approximately 42 per cent of turpentine oil, approximately 5 per cent of ammonia, small proportions of ammonium salicylate, hexamethylenamine, thiosinamine, and a phenolic substance such as cresol, albuminous and phosphorus-containing material such as egg, and water. Bacteriological examination showed that it failed to kill a resistant strain of *Staphylococcus aureus* at body temperature within 30 minutes.

Adulteration of the article was alleged in the libel for the reason that it was sold under its own standard of strength, to wit, (booklet cover) "For External Applications, Inhalations, Antiseptic," (booklet, p. 1) "An Antiseptic * * * Application, For Antiseptic Applications," and the strength of the article fell below such professed standard, in that it was not antiseptic when used as directed in the labeling.

Misbranding was alleged for the reason that certain statements appearing in the booklet were false and misleading, since the article fell below the professed standard of strength set forth in said statements. These alleged false and misleading statements were annexed to the libels as Exhibit A and made a part thereof and are appended hereto. Misbranding was alleged for the further reason that certain statements borne on the cartons and bottle labels and appearing in the booklet, regarding the curative and therapeutic effects of the article, were false and fraudulent, since it contained no ingredient or combination of ingredients capable of producing the effects claimed. These statements also were annexed to the libels as Exhibit B and made a part thereof and are appended hereto.

On September 12, 1931, the F. E. Rollins Co., Boston, Mass., entered an appearance as claimant and filed a motion to consolidate the cases, which motion was allowed, and on the same date claimant filed exceptions to the adulteration and misbranding charges contained in the libels. On January 5, 1932, claimant's bill of exceptions having been heard on briefs and oral argument submitted on behalf of the Government and claimant, the court handed down the following opinion sustaining claimant's exceptions to paragraphs 2 and 3, the adulteration and misbranding charges based on the claims as to the strength of the article, and overruling the exceptions to paragraph 4, based on the false and fraudulent therapeutic claims. Chestnut (*D. J.*):

"In these consolidated cases the Government seeks to condemn under the act of Congress known as the food and drugs act of June 30, 1906, as amended in 1912 (United States Code, title 21, sections 1 to 15), certain cartons containing bottles of a proprietary drug arbitrarily called "B. & M." It is alleged in the libels that this drug is (1) adulterated and (2) misbranded, within the meaning of the act. The act is operative, so far as the States are concerned, only to interstate commerce, and it is alleged in the libels that the offending packages were shipped from Massachusetts to Baltimore.

"Section 14 of title 21 of the United States Code provides that the procedure in such cases shall begin by a process of libel for condemnation, and that the procedure shall conform as near as may be to proceedings in admiralty, except that either party may demand trial by a jury of any issue of fact. In accordance with this procedure the manufacturer of the drugs, the F. E. Rollins Co., a corporation of the State of Massachusetts with principal office in Boston, has appeared as claimant of the seized articles and has filed exceptions to the legal sufficiency of the libels. It is admitted by the claimant that its preparation is a drug subject to the provisions of the act. It is sold to the consumer in paper cartons containing bottles. The outside of the cartons contain certain printed matter descriptive of the drug and the uses for which it is recommended. The bottles also contain labels with similar information and directions for use. Inside the cartons, but not physically annexed thereto or to the bottles, is a printed booklet of 32 pages containing much more extensive information and description of the drug and its properties and its claimed effects. It is stated to be 'for external use' and 'for application and inhalation in the treatment of tuberculosis, influenza, pleurisy, bronchitis and other respiratory diseases' and 'for application and relief of inflamed muscles, rheumatism, neuralgia, neuritis, sciatica, lumbago,' and other diseases and injuries.

"Three questions of law are presented as follows: (1) Is the drug 'adulterated' within the meaning of the act; (2) is it 'misbranded' within the meaning of the act in that certain of the statements in the booklet referred to are false and misleading; (3) is it misbranded because certain other statements in the booklet are false and fraudulent within the meaning of the act?

"These questions will be discussed in the order stated.

"Adulteration. It is, of course, clear enough that in the construction of language upon the cartons or bottle labels or in the booklet the meaning given to the language is that ordinarily conveyed by it to purchasers. Libby *v.* United States (C. C. A. 4th), 210 Fed. 148; Hall *v.* United States, 267 Fed. 795, (C. C. A. 5th); United States *v.* 150 Cases, 211 Fed. 350, (D. C. Mass.); Chichester Chemical Co. *v.* United States, 49 Fed. (2) 516, (D. C. App.). But the term 'adulterated' is given a special definition by the act, title 21, section 8. In the case of drugs the term as thus defined means (1) when it is sold under a name recognized by the United States Pharmacopœia or National Formulary, that it differs from the standard of strength, quality, or purity as determined by those publications and (2) where not sold under such a standard name, 'if its strength or purity fall below the professed standard or quality under which it is sold.'

"Paragraph 2 of the libels alleges that this drug is adulterated 'in this, that said article is sold under its own standard of strength,' to wit, 'for external application, inhalations, antiseptic' and 'an antiseptic * * * application,' 'for antiseptic applications,' while in truth and fact the strength of said article falls below such professed standard in that the article is not antiseptic when used as directed in the labeling thereof.

"This statement appears on the cover and on the inside of the 'booklet' which, as stated above, is inclosed in the carton but not physically annexed thereto, or to the label on the bottle. The label on the bottle, however, contains the following reference to the booklet: 'For full directions and information please read the booklet which accompanies this bottle.' It is objected by the claimant that the contents of the booklet are to be disregarded because they do not appear on the outside of the package. The same point is made and hereafter more fully discussed in connection with the charge of misbranding. It is sufficient to say that this point is, in my opinion, not sound with respect to the charge of adulteration because the statements in the booklet are, I think, quite clearly within the mischief aimed at, and are not excluded by the language of the act as to adulteration. It is also to be noted that the wording of the first paragraph defining 'adulteration' is 'difference from recognized standards; explanatory statement on the container.'

"There is, however, another objection made by the claimant in answer to this charge of adulteration which is more meritorious, and, in my opinion, sound. This objection is that the statement or claim that the drug is 'antiseptic,' although in fact not antiseptic, is not within the definition of adulteration as contained in the act. The drug is not sold under a name recognized in the United States Pharmacopœia or National Formulary and therefore the charge of adulteration, if it can be sustained at all, must fall within the second paragraph of the definition which reads as follows:

Below Professed Standard 2. If its strength or purity fall below the professed standard or quality under which it is sold.

"The argument on behalf of the Government is that the statement by the manufacturer that the article is 'antiseptic,' professes a standard of strength for the article to which it does not conform. But I am unable to accept the view that the use of the word 'antiseptic' is a profession of standard of strength within the meaning of the definition. The word 'antiseptic' does not of itself convey the idea of any particular strength or degree. The primary meaning of 'antiseptic' is 'tending to prevent putrefaction or decay.' It is said that the word was in common use long before the bacteriological discoveries of Pasteur and Koch. The word is not equivalent in meaning to the word 'germicide;' that is to say, an antiseptic substance is not necessarily one that kills germs. It is probably true that the most common use of the word 'antiseptic' is in relation to antiseptic surgery, but the term is in its dictionary meaning, and I understand also in its scientific meaning, much broader than its special application to antiseptic surgery. And, as I understand it, the word does not import or imply or 'profess' any particular standard of strength or quality with respect to germs or bacteria. Different antiseptic substances vary in the degree of their strength or effectiveness in killing or tending to prevent the formation of bacteria, and probably vary also with the conditions and duration of application. Therefore, to say that a substance is 'antiseptic' is merely to affirm that it has a tendency to prevent putrefaction, decay, or the development or increase of bacteria; and not to affirm any particular potency in connection therewith.

"Then again it is to be noted that, to be within the definition, there must be not only a professed standard asserted or implied but the 'strength or purity' of the article must fall below the professed standard. The construction contended for by the Government, would, I think, introduce forbidden elements of vagueness and uncertainty into the definition. Small *v.* American Sugar Refining Co. (267 U. S. 237); Cline *v.* Frink Dairy Co. (274 U. S. 445, 453, 454).

"Even if the claim that the article is antiseptic, when in fact it is not, could be brought literally within the wording of the definition, yet, in my opinion, it is clearly not within the intent of the act when we look to the context of the whole definition of the word 'adulterated' and also to the structure of the whole food and drugs act. The obvious purpose of Congress in defining the word 'adulterated' was to cover cases where a drug recognized in the United States Pharmacopœia or National Formulary is sold

under its established name but does not conform to the standard of strength, quality, or purity as determined in that official publication; and when not sold under such an established name, the second paragraph of the definition applies where the manufacturer professes a particular standard of 'strength or purity' to which the article does not conform. In one case the drug fails to conform to its official recognized standard; in the other to its particular professed standard. If the drug does not profess a particular standard of strength or purity, it is not 'adulterated' by reason of a falsely asserted quality, which would be a 'misbranding' under the act.

"The claim that the drug is 'antiseptic' is a profession of quality rather than of strength or purity. It would at least be inapt to say that the 'strength or purity' of a drug 'falls below the professed quality' of the drug because 'strength' and 'purity' are ideas that can not readily be stated in comparison with or in proportion to 'quality;' and it is to be noted that while the first paragraph of the definition of 'adulterated' condemns a drug which falls below the standard of 'strength, quality, or purity,' yet the second paragraph (with which we are concerned) comprehends a case where only the 'strength or purity' falls below a professed standard. A simple illustration of the application of this second paragraph of the definition, with respect to purity, is afforded by the well-known instance of an article that is widely advertised as "99 44/100 per cent Pure.' If, on analysis, such an article proves to be only 90 per cent pure it would obviously fall below a professed standard of purity. And so with respect to 'strength.' If a manufacturer represents that a drug contains 50 per cent formaldehyde when in fact it contains only 5 per cent, it falls below the professed standard of strength.

"Apart from this merely verbal analysis of the definition, I have the conviction that the sense of the definition as a whole excludes its application to the case under consideration. A sentence from the opinion of Justice Holmes, speaking for the Supreme Court of the United States in the case of United States *v.* Johnson (221 U. S. 488, 496), construing a clause of the same act, aptly expresses my view. He there said:

> It seems to us that the words used convey to the ear trained to the usage of English speech a different aim; and although the meaning of a sentence is to be felt rather than proved, generally and here, the impression may be strengthened by argument.

"Counsel for the Government are not able to point to any precedent for similar application of the act although it has now been in force for 25 years, and it would seem highly probable that instances must have heretofore arisen in which a similar application could and should have been made if justified. The absence of such prior application seems to me to be not without significance in interpreting the true intent of the act.

"The claimant's exceptions to the second paragraph of the libel will therefore be sustained.

"Misbranding. The libels allege that the booklet in the carton contains some statements which are (*a*) false and misleading, and other statements which are (*b*) false and fraudulent, and that they both constitute 'misbranding' within the definition contained in the act (Code, title 21, sections 9 and 10). By section 9 'misbranding' covers, as to drugs, cases where 'the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substance contained therein which shall be false or misleading in any particular' and in section 10, there is included three additional classes of misbranding, the third of which reads as follows:

> If its package or label shall bear or *contain* any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent.

It is apparent from this that statements which are false or misleading are hit by the act only when the package or label bears the statement; but if the statement is both false and fraudulent, it is covered by the act if the package or label bears or contains the statement. In this case all the alleged offending statements are contained in the booklet which, as has already been stated, is inclosed within the enveloping carton but is not physically attached thereto and is not a part of the printed matter on the label on the bottle, although referred to thereon. It is clear enough and is indeed conceded by the claimant, that the word 'contain' aptly covers the statements in the booklet, and that therefore statements therein which are false and fraudulent are reached by the

act, but claimant also contends that the narrower language of section 9 with respect to statements which are only 'false or misleading' exclude the consideration of statements in the booklet because the word 'bear' is limited to statements which appear on the outside of the package as sold to the customer. If this were a case of first instance, bearing in mind the obvious and indeed oft stated beneficent purpose of the act, and the mischief it was designed to prevent, I should be inclined to hold that the construction was perhaps unnecessarily narrow, although it must be conceded that the word 'bear' is more aptly used with reference to descriptive matter on the package or label than with reference to a nonattached booklet of advertising matter regarding the drug contained within the package. It is, I think, true that false and misleading statements in the booklet are quite as much within the mischief aimed at by the act as statements on the outside of the carton or on the label on the bottle. It is a matter of common knowledge that many proprietary medicines are sold in carton form with booklets or paper wrappers within the carton which give much fuller information regarding the article than is possible in the limited space provided by the outside of the carton or the label on the bottle. A careful user of articles will read the fuller statements in the booklet and probably rely upon them as much if not more, than the more condensed reading matter on the outside of the carton or label. Emphasis is placed by counsel for the claimant on the proposition that the article is bought by the purchaser principally on the strength of the statements appearing on the outside cover of the package, and that it must be supposed that Congress, acting only on the power to regulate interstate commerce, must have intended to limit its regulations to conditions applicable to the sale in the original package and not to have intended to extend its regulatory power beyond this to the opening of the original package by the purchaser. But certainly this is too narrow a view of the power of Congress. Seven Cases *v.* United States (239 U. S. 510).

"However this may be, I find that the claimant's contention with respect to the construction of the act relating to statements which are merely false or misleading, including the unattached booklet, is supported by authority. The original act became effective June 30, 1906. In 1911, the District Court for the Eastern District of New York held in the case of United States *v.* American Druggists' Syndicate, 186 Fed. 387, 389, 391, that this section of the act under consideration did not cover false or misleading statements in a separate circular inclosed with the article in the enveloping package. And a similar holding was made very briefly in the Southern District of Ohio, in United States *v.* Newton Tea & Spice Co., in 1920, 275 Fed. 384, affirmed on other grounds in 288 Fed. 475. In 1911, in the case of United States *v.* Johnson, 221 U. S. 488 (above cited), the Supreme Court held that this section of the act was aimed at false statements as to the identity of the article, possibly including strength, quality, and purity, and not at statements as to curative effects. Promptly thereafter, pursuant to recommendation by President Taft, Congress, in 1912, amended what is now section 10 of title 21 of the act by adding the paragraph to cover false and fraudulent statements regarding the curative or therapeutic effect of the article. And the legislative history of the act tends to indicate that the word 'contain' in the amendment was inserted by reason at least of existing doubts as to whether a circular or booklet within the carton would otherwise be covered. But still more importantly the Supreme Court in the case of Seven Cases *v.* United States (239 U. S. 510), speaking by Mr. Justice Hughes (who had written the dissenting opinion in the Johnson case above cited) at least impliedly approves the limited effect of the word 'bear' in the earlier section of the law. At page 515 in contrasting the significance of the words 'bear' and 'contain,' he said:

> It appears from the legislative history of the act that the word 'contain' was inserted in the amendment to hit precisely the case of circulars or printed matter placed inside the package and that this is the fair import of the provision. Cong. Rec. 62d Cong., 2d Sess., vol. 48, part 11, p. 11, 322. And the power of Congress manifestly does not depend upon the mere location of the statement accompanying the article, that is, upon the question whether the statement is on or in the package, which is transported in interstate commerce. The further contention that Congress may not deal with the package thus transported, in the sense of the immediate container of the article as it is intended for consumption is met by McDermott *v.* Wisconsin (228 U. S. 115, 130).

"The claimant's contention is that no merely false or misleading statements can be construed as covered by the act unless they appear on the outside of the package. And the contention so expressed would seem to exclude even statements on the label on the bottle contained within the package. It is true

that this contention finds support in the dictum rather than in the decision in 186 Fed. 386, 391. But the broad language there used was not necessary to the decision either in that case or in this and finds no support in the Supreme Court cases above referred to. In that case the expressed view that the statements are limited to the outside of the package is based largely on the consideration of the wording of other sections of the law, which, in my opinion, are not controlling or even persuasive on the particular point because they relate to different conditions. The sounder rule of construction is to limit the consideration to the language of the particular section and when so limited, we find that statements on the label of the bottle are expressly included.

"I reach the conclusion that in dealing with false or misleading statements the booklet is to be excluded, on the authority of the judicial and legislative history of the act. But before finishing the discussion on this point I think some attention may possibly at some later stage of this case be given to the effect, if any, of the legend on the label of the bottle reading as follows: 'For full directions and information please read the booklet which accompanies this bottle.' The significance, if any, of this notation on the bottle has not been set up in the pleadings or referred to in the written or printed arguments of counsel. As the subject is not covered by the libels as now drawn it is not before me for consideration at the present time and I, therefore, express no opinion upon it.

"This particular point as to false and misleading statements is set up in paragraph 3 of the libel and refers to certain statements appearing in the printed booklet as false and misleading 'in that the article falls below the standard of strength set forth in said statement.' The claimant also excepts to the sufficiency of this averment on the ground that statements which are only false or misleading are not condemned by the act unless they relate to the identity of the article; and that the statements referred to in the libel do not relate to the identity of the article or its constituents but at most only to its quality. In this connection it is to be noted that the Supreme Court in the Johnson case, speaking by Mr. Justice Holmes, said: 'But we are of the opinion that the phrase is aimed not at all possible false statements, but only at such as determine the identity of the article, possibly including its strength, quality, or purity.' Justices Hughes, Harlan, and Day dissented on the ground that the section also covered false statements of fact as to the curative properties of the article. In the opinion by Mr. Justice Hughes, page 506, he says:

> I take it to be conceded that misbranding may cover statements as to strength, quality, and purity.

In the later case of Seven Cases *v.* United States (239 U. S. 510), Mr. Justice Hughes, writing the opinion for the court, said at page 517:

> The fact that the amendment is not limited, as was the original statute, to statements regarding identity or composition (United States *v.* Johnson, 221 U. S. 488) does not mark a constitutional distinction.

As a result of these judicial expressions it is at least doubtful whether statements merely false or misleading are prohibited by the act if they relate to matters other than identity or composition. But it is unnecessary to decide this point in this case in view of the conclusion above reached which excludes consideration of the booklet with respect to merely false or misleading statements. The exceptions to the third paragraph of the libels must also be sustained.

"False and fraudulent claims. The fourth paragraph alleges that certain statements on the cartons and labels of the bottles and also in the booklet regarding the curative and therapeutic effect of the drug are:

> False and fraudulent, in this, that the article contains no ingredients or combination of ingredients capable of producing the effects claimed, and that the same were applied to said article knowingly or in reckless and wanton disregard of their truth or falsity; so as to represent falsely and fraudulently that the article was in whole or in part composed of or contained medicinal ingredients effective for the diseases and conditions named therein.

"The exception to this paragraph is based on the contention that the term 'fraudulent' as contained in section 10 of the Code, title 27 (above quoted), means 'actual intent to deceive;' and although the libel alleges the statements are both 'false and fraudulent,' yet it nevertheless narrows the statutory phrase by the expression 'or in reckless and wanton disregard of their truth or falsity' and that as so narrowed they are not within the act which, as construed by the Supreme Court, requires 'an actual intent to deceive,' and therefore it is argued

that this paragraph of the libel is legally insufficient. On this point the court in the case referred to, Seven Cases *v.* United States (239 U. S. 510, 517), said:

> It was, plainly, to leave no doubt upon this point that the words 'false and fraudulent' were used. This phrase must be taken with its accepted legal meaning, and thus it must be found that the statement contained in the package was put there to accompany the goods with actual intent to deceive,—an intent which may be derived from the facts and circumstances, but which must be established.

"The point here presented is, I think, a nicety in pleading rather than one of substantial trial importance. The jury in this case would, of course, be instructed that the false and fraudulent statements relied on by the Government must be of such character that the jury could infer from them an actual intent to deceive. It is to be noted that the libels do expressly allege that the statements were false and fraudulent (in the language of the statute), and also allege that the false and fraudulent statements made in reckless and wanton disregard of their truth or falsity, were effective to represent falsely and fraudulently that the article was 'in whole or in part composed of or contained ingredients or medicinal agents effective for the diseases and conditions named therein.' The narrow question of pleading thus presented is whether false and fraudulent statements made 'in reckless and wanton disregard of their truth or falsity,' and with the effect of false and fraudulent representation in fact, are within the act. As said by the Supreme Court, 'the phrase "false and fraudulent" must be taken with its accepted legal meaning.' The accepted legal meaning of the term 'fraudulent' includes false statements made in reckless and wanton disregard of their truth or falsity. Cooper *v.* Schlesinger (111 U. S. 148); Lehigh Zinc & Iron Co. *v.* Banford (150 U. S. 665); 26 C. J. Title 'Fraud,' section 40 bb., page 1112. Under this act libels or informations or indictments similarly worded have been held sufficient. Eleven Gross Packages *v.* United States, 233 Fed. 71 (C. C. A. 3d); Simpson *v.* United States, 241 Fed. 841, 843 (C. C. A. 6th); United States *v.* 23½ Dozen Bottles, 44 Fed. (2d) 831 (D. C. Conn.), except that the libels in those cases alleged that the false and fraudulent claims were made 'knowingly "and" (instead of "or") in reckless and wanton disregard of their truth or falsity. But the approved charge in 233 Fed. page 74, was 'if you believe from the evidence that any one of the therapeutic claims * * * was false and was made by the claimant with a reckless and wanton disregard as to whether it was true or false, you may find a verdict for the Government.' The use of the word 'or' instead of 'and' in the libels in this case is emphasized as a defect by the claimant. As a matter of pleading I think it would have been preferable in this case to use 'and' instead of 'or,' in which event the proof would have been sufficient if it had shown the statements were made knowingly and recklessly, etc., or knowingly or recklessly, etc. Clearly, if false and fraudulent statements were made knowingly, which I interpret to mean with knowledge of their false and fraudulent character, there could be no question of the sufficiency of the proof. And likewise, the accepted legal meaning of 'fraudulent' includes statements not based on knowledge and made with reckless and wanton disregard of their truth or falsity, for statements so made necessarily exclude the idea of good faith, or honest belief in the truth of the statements, or any reasonable ground for believing them to be true. See also Erwin *v.* Jackson (C. C. A. 4th) 22 Fed. (2d) 56, 57; Knickerbocker Merchandising Co. *v.* United States (C. C. A. 2d) 13 Fed. (2d) 544, 546; Fidelity & Deposit Co. *v.* Drovers State Bank (C. C. C. 8th) 15 Fed. (2d) 306, 308.

"For these reasons the exceptions to the fourth paragraph of the libel are hereby overruled."

On March 29, 1932, claimant filed a motion to strike certain portions of the labeling contained in the Government's Exhibit B annexed to the libels, which motion was overruled without opinion. On June 28, 1932, the case went to trial. At the commencement of the trial the claimant offered in bar, the record and judgment in a case involving a libel filed October 14, 1919, in the United States District Court for the District of New Hampshire, against a quantity of B. & M. external remedy, in which the claimant in this action, at that time known as the National Remedy Co., appeared as claimant, and which was tried to a jury, and verdict and judgment entered for claimant (F. & D. No. 11492, Docket No. 95 Adm., N. J. No. 11671). The court permitted the introduction of the record and judgment, not as a bar to the action, but as evidence bearing on the question of good faith. At the conclusion of the testimony the court

delivered the following instructions to the jury, which contain a summary of the evidence introduced on behalf of the Government and claimant. Chesnut, (*D. J.*):

"Mr. Foreman, and Gentlemen of the Jury: I congratulate you that you have now reached the final stages of this long litigation. You have been listening, I have noted, very attentively to the testimony in this case for the past three weeks. You may have found some compensation for your arduous public service in the interest of the subject matter covered by the testimony and in the consciousness that you are dealing with a case which involves very important issues. The direct effect of your verdict will relate only to the condemnation or release of the particular bottles of the proprietary medicine labeled 'B. & M.' which the Government is seeking to condemn in this proceeding. But, according to the contentions of both parties respectively, although for widely different reasons, your verdict will probably indirectly affect the health and possibly even the lives of many persons. Therefore, the verdict that you render in this case is one of considerable importance and is worthy of your very best consideration in order that you reach a right conclusion.

"In order to be of what assistance I can to you in reaching your verdict, it now becomes my duty to instruct you as to the law of the case and to make some summation of the testimony submitted by the adversary parties in support of their respective contentions. At the outset, let me make it plain to you what are the respective duties and responsibilities of the judge and the jury in the case. It is my responsibility to state to you the governing and controlling law of the case. It is your duty and responsibility to determine the facts of the case. What I say to you as to the law should be accepted by you as controlling, as that is my responsibility only. On the other hand, the determination of the facts is solely your responsibility and anything that I may say in this charge with respect to the facts is to be regarded by you as purely advisory and not in any way controlling of your own determination of what are the facts of the case. In other words, but more briefly, the court determines the law for you, and you determine the facts for yourselves. The summation of any reference to the testimony by me are merely as an aid or assistance to you in a review of the case. If I express any view as to the facts or as to any part of the testimony or seem to do so, you are entirely at liberty to reject that view and substitute your own determination of the facts. But when you have determined for yourselves what are the controlling facts in the case, your verdict is properly arrived at by applying the law which I determine, to the facts which you determine. This is the usual and obligatory practice of this court in all cases, including this one.

"Now first let me explain to you the nature of this proceeding. It is brought under the statute passed by Congress originally in 1906, based on the power of Congress given by the Constitution of the United States, to regulate commerce between the States. The law is known as the Federal food and drugs law and is to be found in title 21 of the United States Code. This act was passed by Congress after many years of public discussion and the underlying purpose was to make unlawful interstate transactions in impure foods and drugs and incidentally the scope of the law included a prohibition of the facilities of interstate commerce to food and drugs which were 'misbranded' and thereby tended to mislead or deceive the public. The section of the statute with regard to misbranding as originally included in the act of 1906, as construed by the Supreme Court of the United States in the case of United States *v.* Johnson (221 U. S. 588), was aimed only at false statements as to the identity of the article, possibly including its strength, quality, and purity, and not at statements as to its curative effect. In consequence of this decision it was felt that the law was not sufficiently broad to protect the public and therefore on June 21, 1911, President Taft (afterwards Chief Justice of the Supreme Court) sent a message to Congress advising an addition to the law in which he said in part:

> In my opinion the sale of dangerously adulterated drugs, or the sale of drugs under knowingly false claims as to their effect in diseases, constitutes such an evil and warrants me in calling the matter to the attention of Congress. Fraudulent misrepresentations of the curative value of nostrums not only operate to defraud purchasers, but are a distinct menace to public health. There are none so credulous as sufferers from disease. The need is urgent for legislation which will prevent the raising of false hopes of speedy cures of serious ailments by misstatement of facts as to worthless mixtures on which the sick will rely while their disease progresses unchecked.

"I take this quotation from the charge of Judge Morris in the New Hampshire case.

"As a result of this message Congress passed an amendment to the original Food and Drugs Act known as the Sherley Amendment, so that the law (U. S. C. A., title 21, section 10) in this respect now reads as follows:

An article shall be deemed to be misbranded * * * in case of drugs * * * if its package or label bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent.

"Other provisions of the act authorize proceedings by the Government to seize and condemn misbranded drugs which have been shipped in interstate commerce. The proceeding is called a libel for condemnation of the offending article.

"In these particular cases which you are now trying the Government seized certain bottles of an article of drugs, labeled in part 'B. & M.,' here in Baltimore and on August 21, 1931, filed in this court its libel to condemn the articles, in which it is alleged in paragraph 4:

That certain statements borne on the labels of said cartons and borne on the labels of said bottles and certain further statements appearing in said printed booklet regarding the curative and therapeutic effect of said article are false and fraudulent, in this, that the article contains no ingredients or combination of ingredients capable of producing the effects claimed, and that the same were applied to said article knowingly or in reckless and wanton disregard of their truth or falsity so as to represent fraudulently and falsely that the article was in whole or in part composed of or contained ingredients or medicinal agents effective in the diseases named therein.

"The particular statements complained of are set out in an exhibit marked 'B' filed with the libel and consisting of labels on the bottles and the cartons containing them, and also for the most part, of the statements in the booklet which was inclosed in the carton around the bottle.

"When you retire to consider your verdict you will receive from the clerk and take with you to your jury room the libel papers filed by the Government in the two consolidated cases which are now on trial. I call to your attention that paragraphs 2 and 3 of the libel set out additional grounds for the claim of condemnation of the drugs, based on other alleged violations of the act but you should give no consideration to these paragraphs 2 and 3 of the libels because after argument of counsel I have determined as a matter of law that the grounds alleged in paragraphs 2 and 3 are insufficient in this case and therefore, these particular grounds of condemnation are out of the case and are not submitted in any way for your consideration. You are to limit your consideration to the ground of condemnation set up in paragraph 4 of the libels which I have already read to you.

"After the bottles of 'B. & M.' involved in these cases were seized by the Government, the manufacturer, the F. E. Rollins Co., a corporation of the State of Massachusetts, intervened in the case as claimant and filed an answer in opposition to the condemnation in which it stated that it was the manufacturer, the shipper, and the owner of the bottles of 'B. & M.' and of the containers thereof, that it denied that the drug is misbranded and denies that the statements on the labels of the cartons and on the bottles and in the booklets are false and fraudulent. The answer admits that the articles were transported in interstate commerce.

"The nature of this proceeding is not exactly like the ordinary case, either civil or criminal, which juries are called upon to try. The ordinary civil case tried by a jury is one where the plaintiff is seeking to recover a sum of money or other property from the defendant. The ordinary criminal case is one where the Government proceeds by indictment or information against the defendant and where, in the event of a conviction, there is a penalty by way of fine or imprisonment imposed. But the proceeding in this 'B. & M.' case differs from the ordinary civil or criminal case tried by a jury in that it is not a proceeding to impose any monetary damages as in a civil case or any fine or imprisonment as in a criminal case, but only a proceeding to condemn and forfeit the particular articles seized. The manufacturer of these articles, in accordance with the established practice, is permitted to, and in this case has, come into court and claimed the articles and denied that they are subject to forfeiture or condemnation. It results, therefore, that in this particular case the two parties to the case are not called plaintiff and defendant but one party is the Government of the United States seeking to condemn the articles.

and the other party is called the claimant who is opposing the condemnation. The nature of the case, therefore, is a civil case between these two adversary parties. If you should find for the Government, your verdict would so state and the direct effect is the condemnation of the articles and their destruction or other disposition in accordance with the provisions of the statute. And if your verdict should be in condemnation of the articles, they might, upon order of court and the payment of costs of these proceedings and the execution and delivery of a good and sufficient bond to the effect that the articles shall not be sold or otherwise disposed of contrary to the provisions of the food and drugs act, or the laws of any State or Territory, be delivered to the owner thereof. You will see, therefore, that the main purpose of this proceeding on the part of the Government is not primarily to acquire any property but to prevent the sale of the bottles of 'B. & M.' contrary to law. The essential nature of the case, therefore, is that this is something in the nature of a test case in which the Government is seeking to condemn the practice on the part of the manufacturer of selling this drug in interstate commerce under the alleged misbranding. But from the standpoint of the claimant the case is also indirectly of much greater importance to it than the mere condemnation of the particular bottles of 'B. & M.,' in that it is said the condemnation of these bottles would in principle establish a decision which would in substance destroy the life of the business.

"Now to come more directly to the exact issues of fact which you are to decide in this case, I point out to you that to establish its contention the Government must prove to your satisfaction by a preponderance of the evidence, that is by the more weighty evidence looking both to quantity and quality thereof, two things, as follows: (1) That the articles were shipped in interstate commerce. This is admitted by the claimant so that it need give you no further concern. (2) That the representations contained on the labels of the cartons and on the bottles and in the booklets, or some essential part thereof, as contained in Exhibit B filed with the libel and above referred to, are false and fraudulent.

"The exact issue of fact, therefore, that you have to determine in this case and the only issue of fact so to be determined is whether these bottles of 'B. & M.' are falsely and fraudulently misbranded. But I call to your particular attention that the Government does not establish its case here unless they prove to you that the alleged misbranding is both false and fraudulent. It is not sufficient for the Government merely to prove that the branding is false. It must also prove that it is fraudulent because that is the requirement of the Sherley amendment to the food and drugs act which I have above quoted to you with respect to misbranding which relates to the curative and therapeutic effects of the drugs.

"Now you should separately consider in this case all the testimony submitted both for the Government and for the claimant with respect to these two questions as to whether, first, the branding is false, and secondly, if so, is it also fraudulent. Somewhat different considerations apply to these two alleged facts. It is possible that you may reach the conclusion that the branding is false but not fraudulent. If so, then your verdict should properly be for the claimant. But if you reach the conclusion of fact that the branding is both false and fraudulent, then your verdict should be for the Government.

"I will make some reference to the testimony in the case dealing on the question as to whether the branding in this case, or some essential part thereof, is false—that is to say, is the representation made to the public on the labels of the bottles and cartons and in the booklets, incorrect and erroneous? Here the matter is to be considered apart from the question as to whether it is also fraudulent. A misrepresentation may be made either innocently or fraudulently; that is, it may result from misinformation or accidently or inadvertently or even from negligence. It may be false but nevertheless honest. It is in this sense that we are dealing with the word 'false' as applied to the subject matter.

"Now the first thing for you to determine is what, in substance, is the claim or representation made for 'B. & M.,' prominently displayed on the labels of the bottles and the cartons containing them and on the outside cover of the booklet in the following: '.B. & M. Formerly called B. & M. External Remedy For External Applications, Inhalations Antiseptic, Stimulative, Soothing, Penetrative, Volatile, Alkaline In the treatment of Tuberculosis, Pneumonia, Bronchitis, Influenza, Colds, Croup, Rheumatism, Lumbago, Acute and Suppurative Skin Infections.'

"It is entirely clear, therefore, that 'B. & M.' is conspicuously recommended, to the public as a remedy for all these numerous diseases. The question at once arises as to what is the fair meaning of this representation. The word 'remedy' as thus used is to be taken in its common and ordinary meaning—that is to say, in the meaning that would naturally be attributed to it by the public and particularly those persons who would be inclined to purchase and use it if they were suffering, or thought they were suffering, from any of the diseases mentioned. The primary signification of the word 'remedy' as defined in Webster's New International Dictionary, edition of 1932, is as follows:

That which relieves or cures a disease: any medicine or application which puts an end to disease and restores health.

The word 'remedy' does not import a guarantee of a cure but it does necessarily imply as here used a substantial curative tendency with respect to the diseases mentioned. The interior text of the booklet, on page 5, states as follows, under the caption of 'What we claim for "B. & M."'

We claim that B. & M. alleviates much suffering and that it has remedial and therapeutic effect in appropriate cases of various afflictions in which we recommend its use. * * * We do not claim that B. & M. will make any one live forever or that it will have remedial effect in every case.

In other places the booklet, in support of the recommendations of 'B. & M.' cites numerous specific instances of cures or substantial recoveries of patients suffering from the diseases mentioned as a result of the use of 'B. & M.' Taking the booklet as a whole and bearing in mind the nature of the subject matter and the purposes for which the booklet is written. it seems entirely reasonable to conclude that the recommendation of 'B. & M.' as a remedy for these diseases was designed to be understood by the public and would naturally be understood by the public in the ordinary meaning of the word 'remedy' which, as already defined, is that it has curative tendencies for the diseases for which it is recommended. I have been asked by the claimant in this case to instruct you that the recommendation of 'B and M.' as a remedy means no more than that it has some palliative or alleviative effect in the treatment of the diseases; that is to say, the word 'remedy' as here used implies no more than that 'B. & M.' will do some good in the use of the diseases as, for instance, by relieving or abating some of the symptoms accompanying the disease, such as pain and physical suffering from the disease. But I think you can very reasonably find from the booklet that the representation to the public goes beyond this and is, in effect, a representation that 'B. & M.' has a substantial curative effect or tendency towards arresting the disease and restoring the patient more or less fully to normal activity. However you have each received and read, or will have opportunity to read, the booklet as a whole and to the extent, if any, that the representations made on the labels and in the booklet as a whole are uncertain or doubtful you can draw your own conclusions as to what is the substantial representation therein made to the public, reading and interpreting the language used in its ordinary and common acceptation.

"Now when you have determined what is the fair meaning and import of the representations made with respect to the use of 'B. & M.' for the diseases mentioned, you should ask yourselves whether, as a result of consideration, of all the testimony in the case, the representations so made to the public are true or substantially false. For your convenience only, I will now make, as far as I possibly can in view of the great volume of the testimony in this case, a succinct summary of the more important testimony submitted on both sides bearing on this issue of fact. On behalf of the Government you have heard the testimony of numerous medical and scientific witnesses which in effect purports to give you practically the whole field of knowledge and scientific and professional consensus of opinion on this issue and in substance it is that there is no basis in medical or other pertinent science in support of the claim that 'B. & M.' is a remedy for the diseases mentioned, or any of them. And the opinions and information thus given to you are supported by the respective witnesses from the fullness of their knowledge and personal experience, and the reasons for their statements have been given to you at great length. These witnesses include experienced analytical chemists, a competent and experienced doctor of medicine who is specializing in the field of pharmacology, which is the science or profession dealing with the effect of drugs upon animal and human bodies, physicians in general practice, and specialists in

the study and treatment of tuberculosis. Most of these witnesses are graduates of, and some are now professors in their respective subjects in the best known medical colleges and universities of this country, including the Harvard Medical School, the Johns Hopkins University, and the University of Maryland. To recall to your recollection only a few, these witnesses included, among others: Doctor Geiling, professor of pharmacology in the Johns Hopkins Medical School; Doctor Grollman, assistant professor of physiology, Johns Hopkins University; Dr. L. L. Barker, former professor of medicine, Johns Hopkins University and for many years widely engaged in consulting and bedside practice of general medicine in Maryland and elsewhere; Dr. James H. Sever, professor of orthopedic surgery, Harvard University; Dr. Victor F. Cullen, superintendent Maryland State Tuberculosis Sanitarium, Sabillasville, Md.; Dr. John B. Hawes, graduate of Harvard Medical School, specializing in tuberculosis; Doctor Floyd, also of the Harvard Medical School, specializing in tuberculosis and connected with the Boston Health Department; Dr. Lawrason Brown, graduate of Johns Hopkins University, for many years superintendent of Tuberculosis Hospital, Saranac, N. Y.; Dr. Gordon Wilson, professor of medicine, University of Maryland; Dr. Samuel Wolman, graduate of Johns Hopkins Medical School and for many years specializing in tuberculosis.

"The substance of the testimony of these witnesses, if believed by you, is that there is no known medicine which has or could possibly have the substantial curative effect claimed for 'B. & M.' for the numerous and several diseases recommended or for any of them and in many cases the witnesses testify that they are not giving merely their individual opinions based on their own scientific and professional knowledge and experience, but are stating the consensus of medical opinion upon the subject. The chemical analysis of B. & M. shows that it contains 50 per cent water, 40 per cent of turpentine oil, 5 per cent ammonia gas and small quantities of proteins (egg), carbolic acid, thiosinamine, and some salicylates. These witnesses were informed of the constituent element or drugs composing 'B. & M.' and were familiar with the several drugs and the effect thereof as applied and used for the various purposes in medicine and expressed the opinion that the drugs either separately or in the combination in which they are found in 'B. & M.' could not possibly have the effect claimed. Two of the witnesses specializing in tuberculosis, Doctor Cullen and Doctor McMurray, of the Davidson County Tuberculosis Hospital at Nashville, Tenn., testified that at the request of the Department of Agriculture a year or two ago they experimented with the use of B. & M. in the treatment of patients suffering from tuberculosis at their hospitals and found no beneficial effects whatever in any of the cases. Counsel for the claimant criticizes the adequacy and sufficiency of the use of B. & M. as actually used in these experimental cases. You have heard the testimony of these witnesses and will yourselves be the judges of the fairness and sufficiency of the tests made by them of B. & M.

"The testimony submitted on behalf of the claimant in this case in support of the remedial effect claimed for B. & M. consists of the testimony of Doctor Martin, who is the only physician testifying for the claimant, and the testimony of Mr. Rollins, chief executive officer of the claimant, and of Mr. Johnson, the president and counsel in this case for the B. & M. company, the latter testifying to personal experience of B. & M. as to a few of the less serious diseases mentioned and the testimony of certain laymen who were suffering from, or thought they were suffering from, some of the diseases mentioned. The reports and studies of Fenwick and Pease are not to be considered in this connection, as they are not supported by any legal evidence as to the statements or conclusions therein. You should carefully consider all this testimony submitted on behalf of the claimant and give to it such weight as you think it is entitled to in view of all the testimony in the case. You have seen and heard Doctor Martin testify. He is not a specialist in tuberculosis but is a Boston physician engaged in general practice. For many years he has been regularly on an annual salary of at first $600, and now $900, a year from the claimant corporation for medical advice which is given mainly in the form of correspondence with customers using or proposing to use B. & M. Doctor Martin testified to numerous and very remarkable cures effected by B. & M. in his personal practice. You heard his testimony as to what knowledge he had of the constituent drugs used in B. & M. You may have thought it was not very full or accurate. He was unable to submit any definite statement of how B. & M. accomplishes the results which he says he has noted. He submits a tentative theory of his own which finds no support in the whole field of medicine and scientific knowl-

edge as testified to by the Government witnesses. He is the only medical witness who undertakes to justify the claims made for B. & M. You should carefully consider his testimony and give it such weight as you think it is entitled to. You should also consider the testimony of Mr. Rollins bearing in mind that he is, of course, the most directly interested party in this controversy and the fact that he has had no scientific or medical education. He testifies to very many remarkable cures made by B. & M. according to his own personal observation. He has also submitted his theory and belief as to how B. & M. works and accomplishes the wonderful results claimed by him for it. It is fair to him that you consider that as a layman he has, of course, had the greatest opportunity to observe the use of B. & M. in actual experience. He, more than any one else, is in direct contact with the users of B. & M. Whether he is competent to diagnose and correctly interpret the diseases which he has mentioned in the cases of various patients and to reasonably interpret the effect of the use of B. & M. in the several cases, is to be determined by you and you can also consider, in weighing his testimony, the fact of his great personal interest in this controversy. You should also consider for whatever weight you think it may have, the testimony of the other laymen who, as witnesses, have testified to the effect they have noted in the personal use of B. & M. in various diseases from which they were suffering or thought they were suffering. About 20 lay witnesses testified for the claimant in this case as to various beneficial and curative effects from the use of B. & M. In connection with their testimony you can properly consider whether, in view of their lack of medical knowledge, they were competent to properly diagnose their own cases and to correctly interpret the effect of the use of B. & M. You can also consider the testimony submitted by the Government in rebuttal with respect to many of these cases in which tuberculosis was the disease dealt with, which is to the effect that the witnesses referred to, who thought they had been cured from tuberculosis by the use of B. & M., according to the testimony of Doctor Wolman, the tuberculosis expert who examined them during the trial, are still suffering from tuberculosis; and in some cases the Government has offered death certificates showing that persons said to have been cured of tuberculosis have shortly thereafter in fact died from tuberculosis.

"Very shortly summarizing the effect of the conflicting testimony on this issue, it is that the whole consensus of medical opinion is that B. & M. is substantially worthless in the treatment of the diseases mentioned; and as against this consensus of medical opinion the testimony of the claimant in support of the claims made for the remedy consist only of the testimony of Doctor Martin and the lay witnesses who testified from personal experience. This latter testimony the claimant refers to as empirical knowledge as contrasted with the scientific knowledge on the part of the Government. The claimant seeks to justify its representations to the public principally on this empirical knowledge. But you may consider that this so-called empirical knowledge with respect to tuberculosis is contradicted by some empirical and scientific knowledge contained in the testimony of Doctors Cullen and McMurray who used B. & M. in some 40 cases of tuberculosis without beneficial result. You may consider that the results of the use of B. & M. as observed by a competent and experienced specialist in tuberculosis are more valuable than the testimony of laymen based on their own untrained experience. And in this connection reference may be made to the statement in the claimant's booklet on page 5 as follows:

> We expect better results invariably where the use of B. & M. is combined with other care and treatment by a skillful, conscientious and open-minded physician.

You can, of course, consider whether Doctors Cullen and McMurray are skilled, conscientious, and open-minded physicians.

"In reaching your determination on the issue of fact as to whether the claims made for B. & M. are false, you are, of course, not bound to accept the consensus of medical opinion as stated by the Government's witnesses. And you are not to be governed in any way in your decision by the fact that the United States, as represented by the Department of Agriculture, has decided to prosecute this proceeding. On the contrary, you are entitled fully to consider what weight the claimant's testimony on this issue has with you. If you reach the conclusion that the matter is one really of two schools of thought and that there is very substantial basis for the claims made and that the whole matter at issue is really only one of controverted opinion, then you should properly find for the claimant on this issue because where there is a substantial

difference of opinion between people who on reasonable bases think differently about a matter, that difference of opinion only can not be made the basis of a finding that the claims for the remedy are false. In any event, the Government having brought the charge has the burden of proving to your satisfaction by a preponderance of the evidence that the representations made are in fact false. I point out to you, however, on this issue, that there is here no mere conflict of opinion between two schools of medicine. The difference of opinion here is not between two groups of scientists holding opposing views, but (with the exception of the testimony of Doctor Martin for what value you attribute to that) the difference is between a practically nation-wide scientific knowledge on one side, and personal observation of a comparatively few laymen on the other side. I think you can very reasonably reach the conclusion in this case on this issue that after making all allowance for the good faith of these lay witnesses (which on this issue for the sake of the particular inquiry may be assumed) there still remains a field in which statements as to curative properties may be downright falsehoods and in no sense mere expressions of judgment. But however that may be, the issue is for you to determine from all the testimony in the case, giving the respective contentions such weight as you think they are entitled to.

"If you reach the conclusion that the representations as to B. & M. are substantially true, then your verdict should properly be for the claimant. But if you reach the conclusion that these claims are substantially false, then your next inquiry must be whether, in addition to being false, they are also fraudulent, because it is only in the event you find that the claims as made are both false and fraudulent that you can properly find a verdict for the Government and against the claimant.

"And here I must instruct you further as to what is the legal meaning of the word 'fraudulent' as here used. I have pointed out to you that the food and drugs act as originally passed and as construed by the Supreme Court did not prohibit even false branding of drugs in matters relating to their curative or therapeutic effects and to repair this omission Congress in 1912 by what is known as the Sherley amendment, amended the law to prohibit misbranding of drugs with respect to their curative or therapeutic effects, and prohibiting such misbranding in interstate commerce if the misbranding was false and fraudulent. This amendment of the law came before the Supreme Court of the United States for consideration in 1915 in a case entitled 'Seven Cases *v.* United States,' reported in 239 U. S. 510. The Supreme Court, by Mr. Justice Hughes (now Chief Justice), sustained the validity of the amendment and in discussing the law plainly explained the effect of the amendment and the force of the word 'fraudulent' as therein contained. It was there said:

> This phrase must be taken with its accepted legal meaning, and thus it must be found that the statement contained in the package was put there to accompany the goods with actual intent to deceive—an intent which may be derived from the facts and circumstances, but which must be established. That false and fraudulent representations may be made with respect to the curative effect of substances is obvious. It is said that the owner has the right to give his views regarding the effect of his drugs. But state of mind is itself a fact, and may be a material fact, and false and fraudulent representations may be made about it, and persons who make or deal in substances, or compositions, alleged to be curative, are in a position to have superior knowledge and may be held to good faith in their statements. * * * It cannot be said, for example, that one who should put inert matter or a worthless composition in the channels of trade, labeled or described in an accompanying circular as a cure for disease when he knows it is not, is beyond the reach of the law-making power. Congress recognized that there was a wide field in which assertions as to curative effect are in no sense honest expressions of opinion but constitute absolute falsehoods and in the nature of the case can be deemed to have been made only with fraudulent purpose.

"It is clear from this pronouncement of law by the highest authority that to find the actions of the claimant fraudulent in this case you must find that they involved bad faith. And it is equally true that this bad faith may be inferred from all the circumstances in evidence. In this case the claimant is a corporation. As such it is, of course, an artificial being created by the law. But in determining whether its representations to the public are fraudulent you must look to the knowledge or lack of knowledge of its several officers who acted in the matter of making these representations to the public. If some of these officers knew, or must be held from the circumstances to have known, that the representations were substantially untrue, then the corporation has acted in bad faith and you can find in that event that the representations were both false and fraudulent. It is not a sufficient defense to the claimant in this respect to establish merely that one or more of these officers has an honest

opinion as to the truth of the representations. If any of them who acted in the matter within the scope of their authority and who had a substantial part in the making of the representations to the public did not honestly believe in the representations and had information and knowledge that the representations were untrue, you may find that the claimant corporation did not act in good faith but fraudulently. Now it is a sufficient defense to the corporation to show that one of the officers, to wit, Mr. Rollins, alone had a bona fide opinion as to the representations; nor is it a conclusion on this issue that Mr. Rollins states that he does not believe in the claims as made. You have a right to look at all the facts and circumstances in the case to determine whether the representations as made were in fact known to be false or if not actually positively known to be false then were made in reckless disregard of the truth which could have been ascertained upon reasonable inquiry from authoritative and reliable sources. Fraud in its very nature is difficult to define in any all-inclusive way. Here we are dealing with fraud in its relation to the state of mind of the officers of this claimant corporation. The fact that they say they were acting in good faith does not conclude the matter. You have a right to examine and determine from all the circumstances whether their statement as to their opinion is to be accepted and believed by you. If you find that they were in fact acting in good faith and with no intention to deceive the public, then you should find for the claimant in this case. If, however, you find that the statements made by them were made with knowledge of their falsity or recklessly made without reasonable grounds for making them in defiance of known authoritative information which was reasonably available to them and the failure on their part to make said reasonable inquiry, then you may find that they were acting in bad faith and fraudulently. The claimant should not be convicted of fraud merely because it advocates the theory of medicine which is not indorsed by the medical profession but it is equally true that when he fraudulently represents a medicine as a remedy he can not escape the consequences of his fraud by the mere fact that some one may honestly believe in the theory that he fraudulently and dishonestly exploits. The fact, therefore, if you find it to be so, that numerous persons who are laymen believe in the efficacy of this remedy is not a justification for the claimant in this case if its officers did not act in good faith. It is for you to determine from all the evidence in the case whether the statements of any of them are false and fraudulent. If you believe that the drug is so absolutely worthless, for example, for tuberculosis, pneumonia, bronchitis, influenza, or any of the diseases for which it is recommended to have a curative effect and that the claimant must have known it, then you would be justified in finding that the statement with reference to such disease or diseases is both false and fraudulent.

"The accepted legal meaning of the term 'fraudulent' includes false statements made in reckless and wanton disregard of their truth or falsity. Therefore, if you believe from the evidence that any one of the therapeutic claims made for B & M was false and was made by the claimant with a reckless and wanton disregard as to whether it was true or false, you may find a verdict for the Government.

"As I have said, you are to determine in the light of these principles of law whether the claimant has acted fraudulently or in good faith in the matter of these representations. You must consider all the testimony in the case on this point. It has taken a very wide range and comprehends the whole history of the relation of Mr. Rollins and the claimant corporation to this medicine. It is impossible to review it in detail but I shall endeavor to make a condensed summary or outline of the more important facts of the case bearing on this issue of fraud or good faith. And I think they will be clearer in perspective if they are stated largely chronologically.

"Mr. Rollins had no relation to B. & M. until after about 1913. For some years prior thereto he had been a court stenographer in Massachusetts. He knew a man named McClelland who owned the formula for B. & M. McClelland invited Rollins to become treasurer for his company. From McClelland, Rollins learned that in McClelland's association with a race track he had met a Doctor Burns (whether Burns was a doctor of medicine or a veterinarian is not entirely clear from the evidence), from whom he obtained the formula. Mr. Rollins understood that Burns was a medical man, a Cleveland doctor, and had two formulas for liniment, one for horses and one for men. Apparently B. & M., which is a coined phrase named after McClelland and Doctor Burns, was being sold by McClelland to the public as a liniment and possibly for other

purposes. Mr. Rollins says he used it on his hand for rheumatism which aided him in his court work as a stenographer. Later he used it on a member of his family for tuberculosis with very effective results. This member of his family was his daughter who has not testified in the case nor has there been any medical testimony as to her condition. I think that is true, although I am not absolutely certain about it. Mr. Rollins said he was impressed with the efficacy of the medicine and learned from personal experience of its beneficial effects in very serious cases of tuberculosis, rheumatism, pneumonia, etc. He thereupon began to acquire stock in McClelland's corporation and in a few years had bought out all the stock. The sale of the preparation to the public for a wide variety of diseases, including all those mentioned in this case and numerous others, principally including infantile paralysis, was continued. In 1920 Mr. Rollins' company, then known as the National Remedy Co., was prosecuted for false statements or misbranding in the Boston municipal court and found guilty on two counts out of many, and fined $10. The opinion of the municipal court judge has been produced in evidence and found in effect the good faith of Mr. Rollins in that case. The quotation from the opinion in that case is carried on page 22 of the booklet in this case. Reference was made by the judge to the testimony of a Mr. Philbrick as justifying the claimant in some of its statements in that case, with regard to the effect of the use of B. & M. by Mr. Philbrick for a disease with which he was alleged to be suffering. The Government offers evidence in this case that about a year later Mr. Philbrick died from another disease which is among those for which B. & M. is recommended. Mr. Rollins knew of this fact. The quotation from the opinion is still carried in the booklet without reference to the specific cause of death of Mr. Philbrick. In 1919 the Government filed a condemnation proceeding similar to this against B. & M. in the District Court of New Hampshire. The case was tried in December, 1922. The jury found a verdict for the claimant. For reasons to be hereinafter stated, I must instruct you that the finding in this case is not conclusive in this present case nor a bar to its maintenance by the Government. It was, however, a finding that as of that date, to wit, 1919, the goods were not subject to condemnation either because the representations at that time were not false or fraudulent or neither false nor fraudulent. The result of this decision was perhaps naturally to fortify Mr. Rollins's belief that he had been vindicated. He continued to sell the preparation to the public and while the financial returns had been smaller up to that time, they shortly thereafter very materially increased. In recent years the gross sales of the business have amounted to $130,000 to $140,000. In 1931 the amount was $110,000. The net profits have been approximately as follows: 1923, $5,000; 1924, $5,000; 1925, $10,000; 1926, $22,000; 1927, $7,200; 1928, $22,000; 1929, $8,000; 1930, $6,000; 1931, a loss of $13,000. If these figures are not accurate they can be corrected by counsel. That is in accordance with my notes.

" In addition to this, Mr. Rollins's personal salary has varied from $1,200 to $10,000, and still in addition to this, since 1924, or 1925, the corporation has paid out extraordinary expenses for scientific investigations of nearly $100,000, and for legal expenses approximately $25,000.

" In 1929 the Government filed another libel condemnation proceeding against B. & M. in this district court of Maryland. After the case had been set for trial the Rollins company, which had intervened as claimant similarly as in this present proceeding, withdrew its claim and consented to a judgment of condemnation which was accordingly entered. At that time the claimant was represented by Mr. Johnson, now acting with Mr. Yost as trial counsel for the Rollins company. It was stated by Mr. Johnson that the reason for abandoning the test in that case was due to an unexpected discovery that there was a misstatement in the booklet, or claimant's literature, with regard to the percentage of the phenol coefficient (carbolic acid) present in the preparation and that this was due to an error made by one Fenwick, who was a pharmacist advising the Rollins company. It was, however, at that time pointed out to claimant's counsel that if the only change that was to be made was to correct this relatively minor error, another proceeding would promptly be brought and tried out on the full merits. Mr. Johnson then stated that it was the intention of his client to substantially revise its literature and claims so that there could be no cause for complaint by the Government and that steps would immediately be taken to accomplish this. Thereafter the Rollins company engaged the services of the Pease Laboratories at New York, a commercial laboratory said to be headed by Doctor Pease who is said to be a doctor of

medicine and who has wide experience in dealing with the Department of Agriculture in matters of this kind. Claimant contends that it has substantially altered its literature and that the present booklet is very different in the claims made from that previously made. On the other hand, the Government contends that there is little substantial change in the claims as made in the respective booklets. You have both booklets before you and can consider this point for whatever value it may have to you in determining this issue of fraud or good faith. Mr. Johnson also had various interviews with representatives of the Department of Agriculture in which he endeavored unsuccessfully to obtain their approval of the new literature. They warned him before its publication that it would be unsatisfactory and that any one issuing it would have heavy responsibility to justify it. Nevertheless new literature having been prepared or editorially supervised by Mr. Pease, was published and this proceeding has followed.

"You are also to consider on this issue of fact that Mr. Rollins testifies that he endeavored in good faith in the early days of his relationship with B. & M. and his control of the preparation, to have it adopted by the medical profession and have it used in various hospitals and sanitariums. He says it was refused by practically all for different reasons but mostly he attributes the refusal to use it to the fact that it was a proprietary medicine and therefore he charges in substance prejudice or lack of good faith of the medical profession in not adopting it. And you should also bear in mind the testimony of Mr. Rollins that during all the years he has been selling B. & M. he has had numerous testimonials from people suffering with tuberculosis and other diseases testifying to the efficacy of B. & M. This, he contends, has fortified his own opinion as to its usefulness. During the New Hampshire trial of 1922 Mr. Rollins was fully advised from the testimony of numerous scientists and doctors that in their view the remedy was worthless. There was also testimony in the case from certain laymen as to its efficacy. In addition to this testimony, medical and lay, Mr. Rollins admits that he was generally advised by physicians from time to time that the remedy was worthless. He discredited their opinion as of no value because he contends that it was based on prejudice against proprietary medicines or ignorance as to what B. & M. would actually do. He has steadfastly maintained his own opinion about the matter. He reluctantly accepted some diminution of the extent of his claims as set out in the booklet now on trial as compared with previous editions. He maintains vigorously that he is entirely right in his claims for B. & M. and that the medical profession as a whole is entirely wrong. He refuses to give any weight to their views. He maintains his own opinion despite practically universal medical opinion to the contrary, seeking to justify his opinion of what he calls empirical knowledge that is derived from actual experience from the use of a drug.

"You should also consider what is the weight and effect, if any, as bearing on this issue of good faith due to the fact that the Rollins company has in recent years paid nearly $100,000 for alleged scientific investigations to demonstrate the efficacy of B. & M. in accordance with Mr. Rollins' own views, or to establish scientifically similar views. In 1924 Mr. Rollins employed a man named Fenwick, now recently dead, who was a pharmacist, to study the effects of B. & M. scientifically. And it is said that Fenwick performed various experiments on animals and devised a special apparatus for the purpose of testing the germicidal effects of B. & M. This apparatus has been shown to you by one of the witnesses. It is referred to in the present booklet. Mr. Rollins states that he received voluminous reports from Fenwick from time to time and these reports, or some of them, have been offered in evidence. Mr. Rollins contends generally that his opinion is to some extent confirmed or justified by these reports. Mr. Rollins says that his company paid Fenwick for compensation and for disbursements over a period of several years, about $80,000 for this work. Mr. Rollins further admits that these scientific investigations as reported by Fenwick were not clearly understood by him. Some of the reports, or what purport to be copies thereof, have been offered in evidence. Their genuineness and other effect in this case bearing on the issue of good faith alone can be considered by you. It is not claimed that Fenwick had any medical experience or that he experimented with the drug on human beings. The Government contends that Fenwick's experimental data is of no value whatever and could not reasonably have been relied upon by the Rollins

company. While Fenwick was originally said to have been employed merely as a chemist by the Rollins company, it also appears that later he was called by the company, its Director of Research, and the large sums of money paid him would seem to indicate that he was in a very substantial sense an employee and agent of the corporation. Whether, under all the circumstances, Mr. Rollins or his corporation was substantially justified in making their statements in reliance upon anything Fenwick had said or done is for your determination, bearing in mind all the circumstances of the case including those already specially referred to.

"You will also bear in mind that the present booklet is said to have been prepared by Doctor Pease and a large amount of it, and particularly all of it under the head of scientific evidence, is the work of his laboratories based in part upon Fenwick's work and apparatus and that other parts of the booklet were under the editorial supervision of Doctor Pease. You can also consider the form and arrangement of the booklet in this case with respect to the matter in large type with reference to the treatment of various diseases and the so-called scientific evidence in small type. You can consider whether this scientific data thus arranged was for the purpose principally of being superficial impressions to the laymen or whether it has any real value to B. & M. with regard to the diseases for which it is recommended. In this connection you can bear in mind the testimony of Doctor Martin, claimant's medical adviser, that he does not understand the purport of the so-called scientific data and that in substance it was placed in the booklet, as he understood it, merely for advertising purposes and in effect that it really means nothing substantially to the laymen. You may possibly conclude that the effect of this arrangement of the booklet with reference to the so-called scientific evidence is to be impressive, rather than really informative. In this connection you can consider the testimony of the Government's witness to the effect that the scientific data is of no value as applied to the effects of B. & M. on the human being in view of entirely different conditions. All this has some bearing on the question of the good faith of the claimant in publishing the booklet. As to its weight in this connection you must be the judge of it.

"Another consideration of possibly even greater importance in this case is the nature of the claim made for B. & M. and the suggestion, at least, in the booklet as to the belief of Mr. Rollins as to how it works. You should consider this as bearing on the issue of good faith and real belief on the part of Mr. Rollins in the light of much common knowledge with respect to tuberculosis which is one of the diseases prominently and conspicuously mentioned in the booklet and as to which much of the testimony has related. You have been told that the tuberculosis germ was discovered about 1881 and as applied to tuberculosis of the lungs, this germ fastens itself within the lungs and becomes encased in a waxy capsule. Medical testimony is all to the effect that there is no known drug which, taken either externally or internally, can penetrate within the lung encased as it is, in sufficient quantities to destroy it. And that therefore, there is no medical remedy having any substantial curative effect for tuberculosis. The disease is widespread, is a great scourge, many people are infected with it, it is itself infectious and a great danger to the world. In recent years it is common knowledge that many millions of dollars have been spent in the treatment and cure of tuberculosis. Many hospitals have been established for the care of its patients. Much of this work has been charitable and philanthropic as well as Governmental. Hundreds and thousands of physicians have been seeking for the best method of cure. Complete rest, nourishing food and similar treatment is the only effective remedy according to the established medical opinion. Now in the light of all this knowledge, you should consider what is the claim that is made by Mr. Rollins as to how B. & M. works as bearing on his good faith. He says in the booklet that he cannot prove how it works but that he believes it works by penetrating through the skin and to some extent by inhalation through the mouth and that it reaches the germs encased within the lungs and draws the poisonous bacilli out through the body and through the skin in the form of eruptions or blisters, from which the poisonous matter is discharged. He contends further that B. & M. is a remedy for any germ disease within the body except possibly brain diseases and that the remedy if used long enough and as directed and applied to the skin will penetrate through the skin and in some way reach the germs wherever they are in the body. But that this cannot be accomplished with diseases of the brain on account of the thickness of the skull. Furthermore, he says the eruptions

on the body will appear only over the seat of the poisonous infections even though B. & M. is applied to other parts of the body. Medical testimony is to the effect that blisters on the body from the use of B. & M. result from the constituents of turpentine and ammonia in the substance. Now you will consider as bearing on the issue of good faith whether Mr. Rollins under all the facts and circumstances of the case honestly believes that the medicine will work this way. It is not sufficient for him or for other agents of the corporation merely to say that they believe it. The question is whether to find that they do honestly believe it. The theory advanced by Mr. Rollins is characterized in substance by medical witnesses as practically impossible. Doctor Geiling, eminent pharmacologist, testifying for the Government, says it is pure nonsense. Doctor Barker said the idea was purely medieval. Even Mr. Rollins admits he has no knowledge that the medicine does work in this way or what properties of the combination known as B. & M. are causative of this alleged result. He says it is a pure mystery to him but he knows it does so work. You will consider whether this claim which, after all is the one that Mr. Rollins originally had and which he has persisted throughout the last 15 years, is made honestly by him and is honestly believed in by other agents of the corporation with regard to the claims made to the public, or whether under all the facts and circumstances the idea is so fanciful, unsubstantial, unsupported by known scientific information, that it is incredible that any reasonable man should actually believe it in face of the fact that he also is perfectly well-informed as to the practically unanimous medical and scientific opinion to the contrary. In this connection you should also bear in mind, as said by the Supreme Court in the case from which I have quoted, that:

> Persons who make or deal in substances or compositions alleged to be curative are in a position to have superior knowledge and may be held to good faith in their statements.

"You can also consider the fact that it is, of course, to the financial advantage of Mr. Rollins to make these representations to the public and that sufferers from diseases that are hard to cure naturally look for help from any source from which it is thought obtainable but they are naturally credulous and generally hopeful and eagerly receptive to suggestions as to cures when their doctors can not themselves give them much hope.

"You can also consider testimony in specific cases offered by the Government tending to show a lack of good faith with respect to certain particular points or statements in the booklet. Time will not permit an enumeration of these particular instances which the Government sets up as specific badges of fraud. The testimony with regard to most of them is conflicting and you should consider the testimony of the claimant with regard thereto as well as that of the Government. Reference may be made particularly to one conspicuous illustration involving the relations between Mr. Rollins and a Mrs. Merchant, to which several hours of testimony were devoted. Mrs. Merchant, you will recall, was a sufferer from tuberculosis and claimed to have been cured by the use of B. & M. Her testimony was included in one of the booklets and continued until 1927. It is a very comprehensive and thorough testimonial. Many people who were presumably prospective customers for B. & M. wrote to her about it. She replied to them. The correspondence consisted of possibly an average of several letters a day over a period of several years. Mr. Rollins was advised of this correspondence. During this time from time to time, he made presents to her aggregating in all over $1,100. He says that much of this was given purely as charity in her later years or when she again became ill and destitute. While she claims to have been cured of tuberculosis by the use of B. & M., the Government offers in evidence a death certificate showing that she died from pulmonary tuberculosis. Mr. Rollins disputes the accuracy of this cause of her death and attributes it to cancer of the rectum. He says her attending physician told him that that was the cause or one of the causes of her death. In the close of the correspondence Mr. Rollins suggested to Mrs. Merchant's son that he supposed the cause of death was cancer of the rectum and that it would be detrimental to his company if the real cause of death was tuberculosis. He inclosed a check to the son as a gift. The implication from all this should have your consideration. Mr. Rollins contends he was acting throughout in entire good faith.

"Another case that has been specifically mentioned by the Government as indicative of fraud but denied in testimony submitted by the claimant, is that of Agnes Lovejoy who was referred to by name in some of the earlier booklets as cured of tuberculosis of the joints by the use of B. & M., which disease is

also referred to specifically in the present booklet, and Mr. Rollins says that the Lovejoy case, although not specifically named in the booklet, was in his mind as a basis for that recommendation. But the Government contends that the Lovejoy case was the one which was involved in the Boston trial and the claimant continued to make statements of the case after Doctor Sever testified that Agnes Lovejoy was cured before discharge from the hospital and before the use of B. & M. The present booklet refers to certain cures of tuberculosis treated with B. & M. by Mrs. Hammond. The Government has offered testimony tending to show that B. & M. had no substantial part in the treatment of the majority of these persons so referred to. This again is disputed by the claimant and the testimony is conflicting. The method of treating customers of B. & M. by correspondence is advanced by the Government as indicative of reckless actions in the treatment of diseases by the claimant and as suggestive of lack of good faith by reason of its recklessness. You can also consider that in the early days around 1915, Mr. Rollins stated that B. & M. was cordially recommended for various diseases by three doctors whom he named. Two are now dead and one called as a witness by the Government has testified that Mr. Rollins has either grossly exaggerated or entirely misstated the effect of his statements to him, Mr. Rollins, as to the effect of the use of B. & M. His testimony is categorically denied by Mr. Rollins. The case of a Mrs. LaPierre as alleged to have been cured of tuberculosis by the claimant is cited despite the fact that her death certificate shows she died of tuberculosis May 3, 1914. Mr. Rollins disputes this.

"You can also consider the fact that Mr. Rollins and Mr. Johnson, to a lesser extent, after hearing all the medical testimony in this case maintain their position and their opinions and in substance give no weight or effect whatever to the Government's testimony as affecting their views. Arguments in favor of their respective positions over this are made by both parties. The Government contends that such an attitude is evidence of reckless disregard of the very highest and most authoritative and informed medical opinion without adequate basis for rejection of it. The claimant relies on the circumstance as indicative of their persistent and consistent good faith. The jury can make their own inferences in this respect. The jury may also consider what inferences are to be drawn from the failure of the claimant to call Doctor Pease as a witness in this case. As he has not been called as a witness it is clear that the jury cannot consider the scientific work that he is said to have done in support of the claimant's position. The fact that he did the work and made the reports and was paid $15,000, for the work by the claimant is relied upon as showing their good faith with respect to the claims contained in the booklet. While Doctor Pease has not in fact been called as a witness, claimant's counsel states that he was in court during the taking of the Government's testimony for a week or more and that they fully expected to call him as a witness in this case. They expressed great surprise and disappointment that he refused to stay and testify. The Government in the closing days of the trial upon learning definitely that the claimant did not expect to call Doctor Pease as a witness, obtained a special order for him to be summoned. His business is in New York and his home is near by. It is reported that the summons has not been served on him. In the absence of any other testimony with regard to Doctor Pease the jury fairly can not consider anything other than the bare fact that he is not called as a witness for the claimant. This fact is a matter of argument and possibly inference which may be addressed to you by counsel for the parties respectively. In connection with the good faith of the claimant in relation to Doctor Pease and whether the claimant was justified in relying upon his reports and experimental work, you can consider all the facts and circumstances in the testimony. It appears that Doctor Pease was first employed by Mr. Johnson as an expert witness to testify in court in support of the claim. Later, after the claimant determined to change its literature, Mr. Johnson says he employed Pease to advise them generally with regard to what claims they could justly make. Claimant contends that as a result of this it substantially changed this booklet. The Government contends there is no substantial change. You have both booklets to compare in this respect. You may bear in mind that the essential nature of the claims for B. & M. was advanced many years ago by Mr. Rollins, and his company, long before their contact with Doctor Pease.

"There are some other matters in this connection that you should bear in mind, particularly in weighing the testimony offered by the claimant in sup-

port of its good faith. The law does not presume that statements, even though extreme, are fraudulently made. The burden of proof is on the Government to show that they were fraudulent by a preponderance of the evidence. The claimant has spent large sums of money for laboratory work and scientific investigations. This has already been mentioned in another connection and is possibly susceptible of different interpretations as applied to the results of the work in this case. Claimant contends that the large sums paid for this work indicate its right to substantially rely thereon and that it would not pay such large sums for work if they did not believe the work honestly represented results of bona fide work done by those who submitted the reports. You can also consider on behalf of the claimant for whatever you may think they are worth in the testimony the large number of testimonials received by the claimant as to favorable results from the use of B. & M., and you may consider the results of personal use by Mr. Rollins of the drug upon himself for various ailments, some of a virulent nature, and in which he says B. & M. has cured him and that he relied upon B. & M. for this purpose without calling in any specialist to treat him for the infections, consulting only Doctor Martin. During the progress of the trial the Government has called for numerous papers from the claimant and the latter contends it has supplied any and all data from its files so called for. Certainly it has supplied a great deal of such information voluntarily. You may also consider that one of the agents of the corporation, Mr. Rollins, is not a highly educated professional man but is a person of only ordinary intelligence but in this connection you should also bear in mind that this comment is not applicable to other agents of the corporation whom you may find to have had some substantial part in making the representations to the public. You can also consider in this connection what has already been said on the subject that the claimant says it relies upon what it believes to be competent and outstanding scientific advisers in the preparation of its literature and accepted the advice of such advisers, particularly Doctor Pease, to the extent of subordinating or somewhat abating its views or contentions in statements which Mr. Rollins believed to be true with reference to the merits of the drug.

"It is not possible even in this lengthy charge to review all the evidence in this case bearing on the issue of fraud or good faith. In the last analysis it is a question of fact for you to determine from all the facts and circumstances in the testimony. I again summarize it briefly by saying that if from all the facts and circumstances you determine that the agents of the corporation acted in good faith and with no intention to deceive the public and that the honest conviction that their statements were true and that this conviction is not merely a reckless assertion but a bona fide belief founded on reasonable basis, then you should find that the statements were not made by the claimant and you should find for the claimant. If, on the other hand, you are satisfied by a preponderance of the evidence that the statements as tested by the above principles of law defining fraud were in fact fraudulent and if you have also found the statements to be false, then you should find a verdict for the Government.

"I will say a word to you with regard to the effect of the New Hampshire case tried in 1922. I previously stated that you were not to regard that case as a bar to this proceeding. I have, however, admitted the important papers relating to this case into evidence for whatever bearing they might have on the state of mind of the claimant's officers with regard to fraud or bad faith. Ordinarily a case tried between the same parties involving the same subject matter and decided on its merits is a bar to further litigation on that same case. But in my opinion the case now being tried is not the same case as was tried in New Hampshire because the legal issue that was there tried was the relation of the literature then published to the drug and involved, among other issues, necessarily the issue of fraud or good faith as of 1919 on the part of the claimant. This case arises and is tried more than 10 years after the New Hampshire case. It is contended by the claimant in this case that the booklet has been entirely rewritten. Therefore, there has been a change in the subject matter, but perhaps even more importantly in this case, the developments during this period of 10 years may make a very great difference from the standpoint of whether what was claimed in good faith by Mr. Rollins in 1919 can still be said to have been claimed in good faith by the claimant in this case as of 1931. To some extent there has been a change in the officers of the company, many things have happened since 1919, much additional information has been obtained or has been available to the claimant in these 10 years, other cases have been brought and disposed of, including the 1929 case in this court,

negotiations have taken place between the claimant and the Department of Agriculture, and generally speaking, it is entirely possible that the facts and circumstances relating to fraud or good faith of the claimant in 1931 may differ vastly from those existing in 1919. And as to the 1929 case disposed of heretofore in this court, it also, in my opinion, is not an estoppel as against the claimant because it appears that although that case was abandoned by the claimant yet there was no trial on the merits.

"There are some general considerations which I think are reasonably implied in what I have already said but which it may be just as well to express to you. There has been some testimony in this case on behalf of the claimant and some expressions of counsel for the claimant in which possibly it might be inferred that this is a case of a medical profession against the Rollins company. That is, of course, not true. Anything that has been said along this line is to be properly understood only as in criticism of the testimony of doctors who testified as witnesses for the Government. The proceeding is by the United States Government and not at all by the medical profession. The medical testimony is that of witnesses only.

"The proceeding is not for the purpose of completely stopping the sale of B. & M. It is aimed only at the condemnation of B. & M., which is sold to the public under representations that it is a remedy for specific and particular diseases complained of in the Government's libel, which had been heretofore mentioned. It is not contended by the Government that B. & M. may not be properly sold as a liniment and used for such purposes. It is also not contended that it may not be sold for various skin troubles such as athlete's foot, or for sprains, bruises, or insect bites. It is not contended by the Government that B. &. M. has no curative qualities in the way of destroying the germs with which it can come into contact. Therefore, your verdict in this case if it should be for the Government will not prevent the sale of B. & M. for the treatment of diseases which are not complained of in the libel. But if you find that the claims are false and fraudulent with respect to any one or more of the diseases so mentioned, then your verdict should be for the Government. It is not necessary for the Government to show that the claims are false and fraudulent with respect to all of the diseases complained of. If it is false and fraudulent as to any one, that is sufficient.

"In determining whether the claims are false and fraudulent you may take into consideration the fact that when an individual or company puts out a drug intended for use by persons so credulous as those suffering from disease such individual or company is assuming a great responsibility and extreme caution should be exercised in informing the public of the curative or alleviating properties of the drug. Great and lasting injury to the health of individuals may result if misstatements are made as to its curative effects by inducing its use in incipient stages of diseases upon which it has no effect, which, if taken in time, might by proper treatment be cured. Knowing and realizing this as every owner of a proprietary medicine must, if he is a person of intelligence, it is for you to say whether or not he should not first ascertain just what its curative and therapeutic effect is upon the diseases for which it is recommended. In this connection and in this case you can consider whether the investigation originally made when the drug was put on the market was sufficient and reasonable or insufficient. You can also consider what has been done in the way of scientific investigations by the claimant in later years and whether the results of this investigation reasonably justified the continuance of the claims as modified and as now made. The testimony shows that large sums of money have in recent years been paid by the claimant for alleged scientific data. You can consider the source from which this information was obtained by the claimant and whether it was selected with reasonable judgment and good faith as authoritative and reliable. It is said by the claimant that the investigations have still not been completed. You can consider whether the claimant has acted reasonably in reference to its claim of good faith in putting out the product before these investigations have been completed, or whether, consistent with its claim of good faith, it should have waited the results of the full investigation before selling the drug to the public under the representations made. In this connection, you may also bear in mind claimant's testimony to the effect that he believes the investigations that have been made are sufficient to justify the claims as made. This case does not involve in any way the right of any person to buy what medicine he pleases and use it for what he pleases. Or, as expressed by counsel for the

claimant, the case does not involve, nor does it deny, the right of self-medication. Nor does the law prohibit a man or corporation from making any medicine he wants to and sell it to the public if he honestly tells the truth about it.

"I have been asked by the parties to give you certain specific instructions. In the charge which I have given you I have covered most of the matters about which specific instructions have been asked by the parties but a few may not have been expressly referred to and I will now cover them.

"You are instructed that you cannot infer that a statement is fraudulent merely because it is false. The Government must prove both by a preponderance of the evidence. With reference to statements in booklets other than those involved in this present case, you are instructed that a verdict for the Government must be based only upon false and fraudulent statements contained in or upon the cartons, bottle labels, and booklets involved in the present seizure and complained of in the libel in this case. and particularly Exhibit B filed with the libel. Any evidence of statements in the booklet has been admitted only upon the evidence of the intent of the claimant in the issuance of the present booklet and your verdict, if against the claimant, should not be made on the basis of statements in former booklets alone. You should not base a verdict for the Government merely upon your own belief that the statements in the booklet in the present case are false and unfounded. If you believe that the claimant was even grossly in error in making the claims, that is not sufficient. You must find that the statements were made fraudulently within the principles above outlined. The point of time as of which you must find that the statements in the booklet were false and fraudulent is the time of the shipment of the particular articles in interstate commerce which was in this case on or about August 1931. As I have said, the burden of proof is on the Government to establish both the falsity and the fraud claimed by a preponderance of the evidence. If after considering all of the facts of the case the minds of the jury are in a state of equipoise on either the question of fraud or the question of falsity, then your verdict must be for the claimant; that is to say, if you find the evidence on each side on either of these questions is equally weighty, then the Government has not established the affirmative by a preponderance of the evidence. In considering the preponderance of the evidence you are not limited to the mere number of witnesses on a particular issue, but you may consider the quality and quantity of testimony bearing on the issue. You are instructed that your verdict, if for the Government, must not be based upon false and fraudulent statements in the booklet which do not relate to the curative or therapeutic effects of B. & M. You are also instructed that in determining the question of fraud or good faith the agents and officers of the claimant corporation are not necessarily to be held to the standards of knowledge of a physician, and the question to be determined is not primarily what a physician or scientist would believe but what the claimant's agents having charge of the matter honestly believe, bearing in mind also, however, as I have said, that the manufacturers of medicine sold for serious diseases are in a position to have and should have superior knowledge upon the subject to that of the general public and must be held to good faith in their statements accordingly. In considering the two issues of falsity and fraud or good faith presented, you are to consider the carton, bottle label, and booklet in their entirety and all that is contained in them as bearing upon the good faith of the representations of the claimant.

"In considering whether B. & M. is a remedy as recommended in the treatment of the diseases mentioned and complained of by the Government, you may consider the effect which the different drugs acting together, or in combination with each other, will have on the human body, but you must also consider the effect of the application as a whole and the manner in which the directions call for its application so that its usefulness, if any, of one or more of the ingredients of B. & M. if separated from the other in the treatment of diseases, is no conclusive proof of the remedial value of B. & M. in the treatment unless good derived from the application of the whole is less than the harm caused thereby.

"In considering the effect of the reports of Pease and Fenwick, as I have heretofore indicated, they are to be considered by you only on the question whether or not the claimant acted in good faith and you must not accept such reports as any proof whatsoever of the scientific truth or accuracy of the

theories or statements made in these reports, Fenwick having died before having testified in this case and Pease not having been called as a witness.

"Finally, gentlemen, if your verdict is for the Government, when called upon by the clerk for your verdict, you will be asked, 'Who shall speak for you?' and you shall say your foreman, and the foreman will then be asked for your verdict, and if it is for the Government, you will say, 'We find for the Government.' If, on the other hand, you find for the claimant, then the answer will be, 'We find for the claimant.'

"I am very sorry indeed, gentlemen, to have had to enlist your further attention to this lengthy charge. The case, as you know, is a highly important one. I am sure that you all have but one desire, and that is to render a public service in the interests of impartial justice in accordance with your very best judgment about all the testimony in this case, to which I noted you have listened so very attentively, sometimes under circumstances of not too comfortable conditions as to weather or otherwise.

"Gentlemen, and counsel of the bar, to the extent that all requests for instructions submitted by the respective parties are not covered in the charge, they are hereby rejected, and exceptions noted on behalf of the parties respectively.

"Of course, it is the usual practice in the Federal courts if counsel desire to take exceptions to the charge as given, they must be specific, that is, to the particular parts of the charge."

Mr. Yost. May we confer just a minute on that question, your honor?

The Court. Yes. Gentlemen of the jury, we will take a recess for 10 minutes.

Mr. Yost. Your honor, there are just two exceptions. While the reference to them may be involved in the prayers, there were so many prayers I should like to make these specific exceptions: In the first place, I should like to except to what we consider the broad definition which the court has given to the words "remedy" and "therapeutic." Our idea is that they are susceptible, properly, of a narrower construction.

The Court. Well, is that all you want to say on that?

Mr. Yost. Yes.

The Court. I have very carefully considered that and I will have to stand by the instruction I gave to the jury on it. Exception noted on that point.

Mr. Yost. Secondly, your honor has referred to knowledge of the several officers of the corporation as constituting the knowledge of the corporation, and then you have referred, of course, to the testimony of Mr. Johnson as president. It is undisputed that at the time this literature was issued, and at the time of these seizures, Mr. Johnson was not president of the corporation. The issue in this case is the intent at the time of these seizures, and I think that that fact, as a matter of law, should be pointed out to the jury because I do not think that Mr. Johnson's intent now has anything to do with the question, has any bearing upon the question of the intent of the corporation at the time the literature was issued, and the seizures in this case made.

The Court. Well, I leave that issue as to who were the officers of the corporation at that particular time entirely to the jury.

Mr. Yost. Of course, there is no evidence to the contrary, your honor, I take it.

Mr. Sobeloff. Yes, there is, and I will point it out.

Mr. Yost. And that is a matter of argument, I assume. I know of no other evidence. Your honor also uses the phrase at one point that the manufacturer of a drug must use "extreme caution." We think that is further than the decisions go, and that he is only answerable for reasonable care and good faith, rather than extreme caution.

The Court. Now, let me consider that a moment: I think I would say to the jury on that that the amount of care that must be exercised is, of course, that which is reasonable in the light of the recommendations made, and the nature of the disease for which the recommendation is made, how serious it is, how serious may be the consequences of a mistake, or of a wrongful respresentation. As applied to some of the diseases in this case, it is clear that they are highly dangerous to the community, to the individual, and the proportion of care that must be exercised must be in proportion to the nature of the thing that is done in the way of representation. From my point of view care which would be reasonable in one connection might be regarded as extreme care in a less important matter. I attach no particular importance to the use of the word

"extreme" as used. I think, probably, your view that it must be reasonable, but reasonable in the light of the subject matter to which it is applied, is probably the correct one, and the jury is so instructed.

Mr. Yost. On the question of res adjudicata, I understand your honor's ruling to be that while the New Hampshire case established the fact that at that time there was no bad faith, or no falsity, either one or both, that that did not necessarily conclude the present litigation, because there is a change in the literature and that, therefore, different issues are involved. I take that to be a ruling on your honor's part that, as a matter of law, the issues are different. We are of the opinion that the difference in the booklets, as to whether there is any substantial difference in the booklets, and, if so, whether the claims in the 1919 literature are broader than the claims in the present literature, and, therefore, substantially cover the present claims, should be left as a question of fact to the jury. I am not quite certain whether, under your honor's instructions, you meant to leave that open to the jury or not, or whether you have ruled on it as a question of law.

The Court. Well, at the earlier stages of this case I suggested, for consideration of counsel, possibly, the testimony could be limited on the issue of good faith, particularly as to matters arising since 1919. Apparently, counsel for the claimant did not take that view of it, because they themselves decide to put in evidence facts and circumstances prior to 1919. I, therefore, thought it was unnecessary to make any further distinctions about that case except to say that in my opinion it is not res adjudicata as to this.

Mr. Yost. And there was one further extract from the charge: Your honor emphasized, I thought somewhat negatively, from the claimant's standpoint, to the jury that they might consider that as the result of their finding, or, should they not find for the Government, they might consider the dilemma in which sufferers from certain diseases might be left by being misled into using something that would not be of any help to them, without in any way offsetting that by a positive statement that, of course, if the remedy has any therapeutic value, in the minds of the jury, and they find for the Government, they might at the same time be depriving the public of a remedy that might be helpful to them. In other words, I think the negative emphasis was placed on that matter.

The Court. I think whether the matter is affirmatively indicated is dependent on the view that the jury takes of the facts. In the first part of the charge I said that the case, in my opinion, is a very important case, according to both the contentions of the Government and of the claimant, that the result would be likely to affect, importantly, the health, if not the lives of a great many people. The Government's contention is that the continued sale of this preparation to the public under the recommendations made tends to induce sufferers from some very serious diseases, particularly tuberculosis, to rely upon the remedy, which the Government says is of no value, and to neglect proper medical advice which might be of real help, while the claimant's contention in this case is that the remedy is so wonderfully efficacious that it ought to be used by every physician for the treatment of these major diseases, including tuberculosis, and if the B. & M. company can not sell it for use in the treatment of tuberculosis the public will be deprived of a very valuable remedy. Now, whether those two things are true is an issue in this case.

Mr. Yost. That is all I have, your honor.

Mr. Sobeloff. The charge is satisfactory to the Government. We have no exceptions, and in view of the very complete review of testimony which is contained in your honor's charge, at the request of both the Government and the claimant, a good part of what I would have said in my opening argument becomes unnecessary to say. I am perfectly willing, if it is agreeable to the court and the claimant, to waive my opening argument.

The Court. Whatever counsel for the claimant desire to say as to that is, of course, agreeable to the court. I am rather disposed myself to suggest that in a case of this importance, which has taken so long to try, probably it would be more satisfactory both to the jury and to counsel for the claimant, to have the Government make at least some opening argument. You do not waive your concluding argument?

Mr. Sobeloff. No, sir.

The Court. I think it is better to have the opening argument made to the jury. Now, gentlemen, as to the practical question of time: The case has taken so long to try, there has been so much testimony, that I am in no dispo-

sition at all to unreasonably, if at all for that matter, limit counsel, but I have indicated that I thought that three hours on each side, is, perhaps, enough for counsel to cover the case in argument. Unless I hear some dissent from that view, I think we can proceed on that assumption, citing quite a legal precedent for similar conditions that, in the appellate courts, while counsel are permitted to take that length of time, they are not obliged to do so. Proceed, Mr. Sobeloff.

Counsel for the Government and claimant thereupon delivered their final arguments, at the conclusion of which the court further instructed the jury.

The COURT. Gentlemen, you are now ready to retire to your room. The clerk will give you, as is customary in all cases, simply the papers in this case; that is the libel papers. There are two cases consolidated, but they are treated as one, and there is no real difference between them, except they are two different seizures here in Baltimore made at two different times. I think I will not ask the clerk to give you any other papers than that unless you ask for them. If you want other papers, you can ask for them from time to time; but to start with I should think that the request should come from you, if you want anything more than just the ordinary papers. * * *

"Of course, you will remember, gentlemen, in addition to this charge as given yesterday morning, there has been one or two things said since then. You will recall them, I think. The principal thing was that this morning I called to your attention that as to Mr. Johnson the evidence showed that he was not president of the company at the time the shipment was made. And it resulted from that, in view of other testimony, that the inquiry particularly with regard to good faith of the officers of the company resolves itself into an inquiry as to Mr. Rollins in that connection, in connection with which, however, you should consider from the standpoint of the claimant corporation as a whole, what information and knowledge and notice it had by virtue of what it learned from Mr. Johnson's activities in the case as its counsel. But in testing the good faith of the individuals, it must ultimately substantially in this case relate to Mr. Rollins.

"However, you will bear in mind that the claimant is a corporation, and if the evidence shows the lack of good faith on the whole, you can consider all the evidence with regard to it.

"Now, is there any other paper you would like to have, gentlemen?

The FOREMAN. Your honor, in the matter of rendering the verdict on behalf of the jury, the mere statement of the verdict for or against the claimant or for or against the Government is sufficient for the court?

The COURT. Yes. The procedure will be this: When you have agreed upon the verdict, you will advise the bailiff, who is your officer in charge, that you have agreed. You need not say any more than that. And then the court will be advised, and you will come in court. The clerk then will call off the jury list and see that you are all here. And then he will ask you if you have agreed. If you have, then he will ask, "Who shall speak for the jury?" And the response is, "The foreman." And then he will ask you, "How do you find your verdict in this case, for the Government or for the claimant?" And your reply will be in accordance with your verdict as you have reached it.

The FOREMAN. There is some question relative to the specifications, whether you eliminated two and three. I think you said you did.

The COURT. Yes.

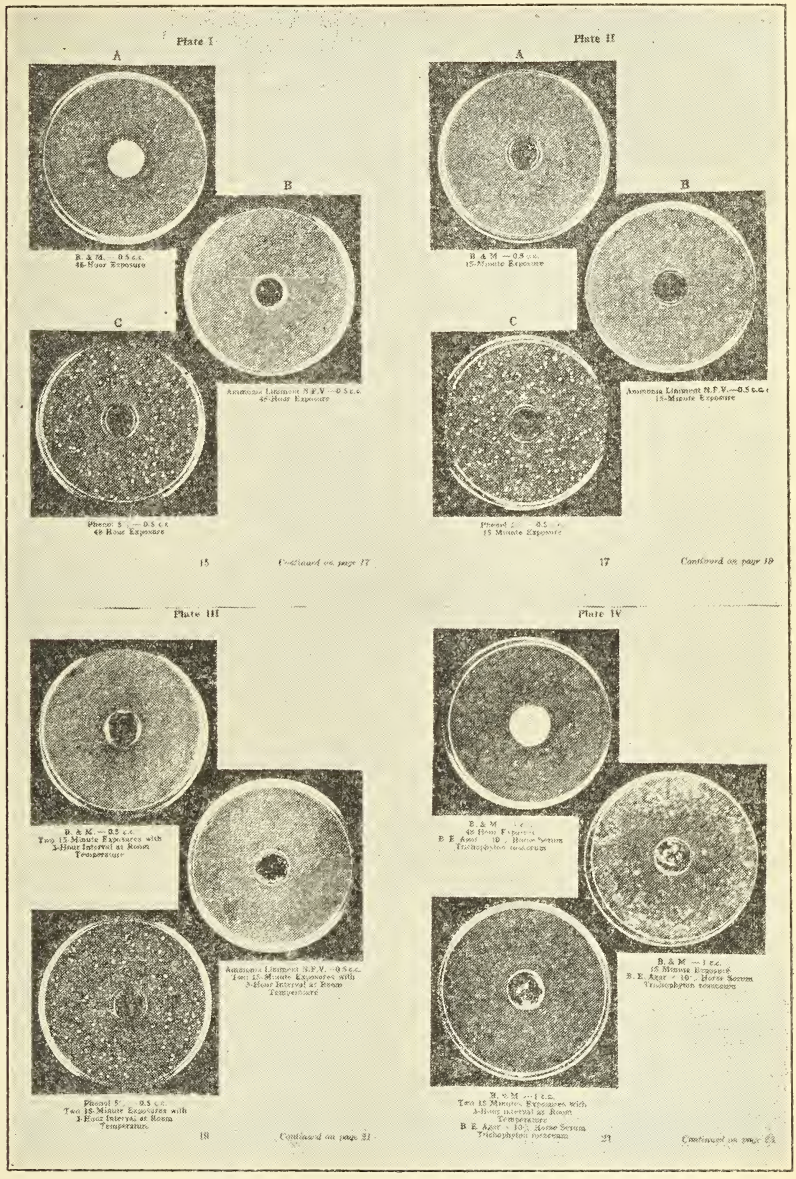
The FOREMAN. I wanted to get clear on that one point.

The COURT. They are out of the case. You need not bother with them at all in the form of your verdict. The only charge that is the basis of the condemnation in this case, as sought by the Government, and defended by the claimant, is contained in paragraph four. And that is the one that you have heard about, the alleged misbranding as false and fraudulent.

On July 19, 1932, the jury returned a verdict for the Government. On July 28, 1932, a motion for a new trial having been withdrawn by the claimant, the court entered a decree ordering the product condemned and destroyed.

The extracts from the labeling which the libels charged to be false and misleading and which were dismissed by the court, were as follows. Exhibit A (booklet cover) "For External Applications, Inhalations, Antiseptic. * * * [p. 1] An Antiseptic * * * Application * * * For Antiseptic Applications * * * [p. 6, 7] Mr. F. E. Rollins, who controls the manufacture and sale of B. & M., believes that B. & M. applied to the skin and inhaled as directed, actually penetrates to the seat of the infection and kills the germs themselves. He is not a physician or a scientist. He has formed this

opinion from his own personal experience on himself, by observation of others, and from what he has been told. We want to say frankly that we are not now able to prove by scientific and legally-competent evidence that this is true. Neither has it been demonstrated to our satisfaction that it is not true. Con-



sequently, while we believe it, yet we desire clearly to be understood as making no claims or representations that B. & M. acts that way. * * * [p. 9] B. & M. under laboratory conditions of testing, will kill certain disease-producing germs commonly employed to study antiseptic action—germs of a kind

more than ordinarily resistant to antiseptics and the use of which in such tests has the approval of certain Government officials. B. & M. contains certain ingredients which will act antiseptically as just stated, even after they have penetrated through jellies and animal membranes, such as freshly-killed guinea pig skin, which are frequently employed in the making of such laboratory tests. * * * We do not claim that the conditions inherent in and surrounding the laboratory methods of study are identical with those which exist when B. & M. is applied to the human body. No tests thus conducted could ever hope to duplicate exactly all the variable and changing conditions of natural use. Laboratory tests of these types avoid some at least of the variabilities which exist in people of different body tendencies, past disease histories and unlike conditions of health and disease. These tests serve also to measure the germ-killing effects as compared with those resulting from like testings of other perhaps longer known germicides such as carbolic acid, or preparations of somewhat similar types, which are made according to professionally approved methods and have had legal federal and state recognition for considerable periods. Of still greater importance is the fact that the results of these types of researches can be expressed in relatively precise or graphic forms so that the reader may gather for himself some ideas as to the ways in which B. & M. acts under the conditions of such investigations. Some of the methods thus employed are quite commonly used by modern laboratory investigators, both in official departments having statutory regulation powers over the sale of foods and drugs and in educational and other institutions. Others of the methods were developed by those who have been intensively endeavoring to reveal the scope and limits of germ-killing action of B. & M. and some of the ingredients used in its preparation. * * * [p. 11] B. & M. is recommended to be applied to the skin in its fluid state and without dilution and obviously its first effects result from these direct applications. Hence when the germ-killing powers are subjected to appropriate testing, the results first to be shown should be those obtained from the direct application of B. & M. to germs. The following tabulation shows the number of a certain type of germs found to be still capable of growth in a cubic centimeter (about fifteen drops) of the testing mixtures of B. & M. and water dilutions, after exposing several million of these germs at the temperature of the human body to these mixtures for the number of minutes indicated at the top of each column of the results. The culture of the germs employed in this test is one having federal official recognition and was obtained from a severe case of infection.

"TABLE I

"[Tabulation of Results of Test with B. & M. for Germicidal Powers when Direct Contact Exists with the Germs]

Product tested	Dilution	Number of germs per c c. (15 drops) surviving after:			
		15 sec.	30 sec.	1 min.	3 min.
B. & M.	Undiluted	1,700,000	600,000	950,000	230,000
	1:2	4,000,000	3,500,000	1,100,000	1,100,000
	1:5	42,000,000	33,000,000	22,000,000	10,000,000
	1:10	96,000,000	48,000,000	46,000,000	36,000,000
Control	(Water)	92,000,000	84,000,000	86,000,000	87,000,000

Product tested	Dilution	Number of germs per c c. (15 drops) surviving after:		
		5 min.	10 min.	15 min.
B. & M.	Undiluted	92,000	16,000	00
	1:2	700,000	260,000	140,000
	1:5	12,000,000	3,200,000	1,000,000
	1:10	24,000,000	12,000,000	4,800,000
Control	(Water)	78,000,000	77,000,000	79,000,000

"These results indicate a speedy and progressively destructive effect of B. & M. upon this species of germ during the first fifteen minutes of contact between them and even when the B. & M. is diluted several times with water. B. & M. is recommended to be used without dilution on the skin except in rare cases and then only with an equal amount of water. As a spray for the nose and throat the dilution recommended is one part to 10 parts of water. Even in this latter dilution the B. & M. solution has a pronounced destructive effect upon the germs in 15 minutes under the conditions employed. Keeping in mind that B. & M. is applied like an ointment or liniment, and it is recommended to be applied full strength repeatedly at each spreading period, usually several times a day, there are presented next the results of a series of tests using a culture of the germ above referred to as from a severe case of suppurative infection and the disease producing powers of which were determined by federal officials. The method of testing is well recognized and the products tested in comparison with B. & M. have legal and official recognition. The germs of this culture are sown in a solidified jelly containing ten per cent of the albuminous fluids of horse blood and possessing a standardized power of promoting growth of these germs when incubated at an appropriate temperature for a given time. The nutrient jelly is solidified in shallow glass plates with removable covers and a hole or cup is made in the center of the jelly into which the B. & M. or the other products used for comparison are placed in measured amounts before starting the incubation. If the antiseptic or germicidal ingredients can penetrate into the jelly before the germs can grow into visible mounds [p. 13] or colonies then there will be zones around the hole or cup showing no spots or colonies of germ growth. The characteristics and the width of these zones of clear jelly will permit the reader to compare the germ affecting powers of the preparations thus tested. * * * Obviously from the results occurring under these conditions, as shown by the plates, B. & M. exhibits marked power of preventing the growth or killing these pus-producing germs. * * * It may be claimed that taking two days for action constitutes too long a period to indicate practical efficiency under the usual conditions of use. In the next series of tests, the time period of contact of these products in the cups in the jelly was reduced to 15 minutes and double the amounts of each of the products were placed in the cups. After 15 minutes, all of the B. & M. and other products which could be, were carefully removed from the cups and then the plates were incubated for 48 hours with the results shown in Plate II. B. & M. is recommended for repeated application. In Plate III are the results of another series of three photographs with two applications of each of the three products three hours apart and left in the cups for 15 minutes each and then removed as far as possible. * * * While these results might not be considered as constituting proof that the antiseptic ingredients of B. & M. would penetrate into the tissues of the human skin to the same degree as they do into the germ nutritive jelly, other lines of scientific research go further towards indicating penetrative power. Scientists devoting much time to B. & M. problems developed a form of apparatus in which the germs of disease inoculated into a moving portion of blood without the colored cells, i. e., the serum, or a moving flow of beef broth standardized to promote the growth of the germs, are brought into contact with an animal membrane covering the outlet of a jar containing the B. & M. or other products under investigation. Thus the flow of germ-containing blood serum [p. 23] or broth passes one side of the animal membrane and on the other side of the membrane is the application of the B. & M., the official liniment or other product being tested. There is no possibility of interchange of fluids except through the animal membrane. The temperatures of the serum or broth and of the membrane at the point of treatment are substantially those of the skin of the human being. The culture of germs used in the first series of such tests employing this Membrane Penetration Apparatus was the same as already mentioned as having a degree of infection power recognized by federal officials. The time period of such contact of each of the flowing fluids with the membranes having one of the products under test on the opposite side has been six hours. Chemical and germ tests of samples of the infected fluids were made at hourly intervals or oftener. In Table II will be found the results of two tests in which B. & M. was the product placed on the upper side of the animal membrane of parchment, in this case Goldbeater's skin. In test (A), the infected circulating fluid was undiluted blood serum taken from a normal horse. In test (B), the infected fluid was standardized nutrient beef broth.

"TABLE II

"Tabulation of Results showing the number of surviving Germs in (A) Circulating Infected Horse Serum and (B) Circulating Infected Beef Broth, after Flowing Over Animal Membranes with Undiluted B. & M. on the Opposite Sides of the Same.

Time in Contact		pH	Test A Numbers of Surviving Germs	pH	Test B Numbers of Surviving Germs
Start of test	acid	6.7	3,200	6.5	3,900
	neutral	7.0			
1 hour	alkaline	9.1	3,100	10.2	3,000
2 hours		9.1	3,400		1,200
3 hours			3,200		10
4 hours			3,000		0
5 hours			810		0
6 hours		9.3	290	10.2	0

* * * [p. 25] Thus in tests with this apparatus there have been found not only substantial reductions in the numbers of living germs in the circulating broth or serum, amounting in some cases to evidences of complete sterility within six hours or less, when B. & M. was employed, but chemical tests applied to small samples of the flowing fluids at fixed time periods during the investigation give conclusive evidence of penetration through the membranes of volatile alkaline ingredients of these products. It was remarked earlier that the germ employed in the tests, the results of which have been reported was one of more than ordinary powers of resistance to antiseptics. It was deemed advisable to make a short series of comparative tests with B. & M., Ammonia Liniment and phenol (carbolic acid) solution upon germs of a less resistant type but none the less of a kind capable of producing skin and other infections. Such a germ is technically described as a hemolytic streptococcus. There are presented next the results of such a series of tests conducted in the Membrane Penetration Apparatus already mentioned.

"TABLE IV

"Tabulation of results showing the Number of Surviving Germs in Circulating Horse Serum Infected with a Hemolytic Streptococcus after Flowing Over Animal Membrane with B. & M., 5 per cent solution of Phenol (carbolic acid) and Ammonia Liniment (N. F. V.) on the Opposite side of the same.

"Numbers of Surviving Germs After Treatments Indicated

Time in contact	B. & M. (Undiluted)	Phenol 5 per cent	Ammonia Liniment (Undiluted)
Start of Test	4,000	2,900	2,900
1 hour	630	1,800	1,650
2 hours	0	1,500	140
3 hours	0	380	0
4 hours	0	0	0
5 hours	0	0	0
6 hours	0	0	0

"Thus there has been developed a body of evidence of the power of certain ingredients of B. & M. quite readily to penetrate animal membranes. A conservative scientific point of view may not perhaps warrant a claim for a like result in the living human being; however, there would appear to be no reason to doubt the power of penetration of some of the antiseptic factors of B. & M. well into the layers of living skin. * * * The question will naturally be raised, do B. & M. fumes possess antiseptic powers and if so are such effects due to the ammonia used in its production, or to some other volatile ingredients or both? It was considered desirable to determine whether the fumes liberated under certain conditions from B. & M., possessed stronger antiseptic powers than the fumes from the official ammonia liniment or an ammonia solution in water of the same general strength. Accordingly a frequently used system of testing fume antiseptic effects was employed. In it the germs of the species, race and virulence first mentioned above were soaked on to filter paper strips; these were confined in sealed glass jars in each of which was the same amount of one

of the products already mentioned (B. & M., Linimentum Ammoniae N. F. V., and also a watery solution of Ammonia carrying the same amount of free ammonia as B. & M.). At various time periods of exposure of the germ-laden strips of paper to the fumes of these products, a strip was removed from a jar and the number of living germs on the strip determined by the usual laboratory methods. The results as shown in Table V are most interesting.

"TABLE V

"Tabulation of Results Showing the Numbers of Surviving Germs on a Strip of Filter Paper Infected and Exposed to the Fumes from B. & M., Ammonia Liniment N. F. V., and a water solution of Ammonia containing the same amount of Free Ammonia is in B. & M.

Product Used	Number of Germs per Strip Surviving After:			
	5 minutes	10 minutes	15 minutes	30 minutes
B. & M., Undiluted	1,500,000	1,200,000	350,000	210,000
* * * *	*	*	*	

Product Used	Number of Germs per Strip Surviving After:			
	1 hour	2 hours	6 hours	24 hours
B. & M., Undiluted	5,000	0	0	0
* * * *	*	*	*	

"B. & M. fumes did not kill as many germs at the start as did the fumes from the Ammonia Solution, but they soon caught up * * * It might not be scientifically sound to conclude from these results that the fumes arising from B. & M. as applied according to directions would destroy in the same length of time, the same numbers of the same race of germs in the membranes and their secretions, of the nose, throat, and of the tubes of the lungs in the living human being. The living conditions are not necessarily the same. The full strength of fumes in each of the jars might be very irritating [p. 29], especially to the membranes of the nose, particularly if inhaled for the same long periods of time. However, the body defenses as a rule need but little added help to exclude or overcome the germs after they have gained entrance into the tissues. If now germs are even but slightly injured by antiseptics, the powers of resistance of the tissues may be much supported. If the injuries to the germs are repeated frequently, and if the living tissues or their secretions around the germs are rendered more or less unsuited for the further growth or existence of the germs, the balance between germs and body resistance may be readily turned in favor of the latter by even traces of antiseptics frequently applied and especially if these antiseptics are alkaline in character and can exist in small amounts in the tissues and fluids of the body and aid in the correction of the abnormal states created by the growth of the germs in the body. By all laboratory methods of determination of antiseptic efficiency published here, B. & M. has shown superiority over Linimentum Ammoniae N. F. V., and over the effects of the equivalent solutions of ammonia in water. The results of these tests also bring out that the fumes from B. & M. are not as concentrated as to either alkalinity or antiseptic potency at the first stages of their volatilization as they are in the second stages, indicating a more balanced or controlled distribution of the effective fumes than the results from the fumes of the official liniment or that ammonia solution in water. The fumes from B. & M. may be expected therefore to be less quickly and easily dissipated into the atmosphere when employed practically and exert their effects over longer periods through opportunities for inhalation than those of the official liniment or plain ammonia water, containing the same amount of free ammonia, as B. & M. Thus the fumes of B. & M. do not have the same capacity at the outset for nasal membrane irritation but possess longer and more effective antiseptic and alkalinizing influences than the other two products. To these superiorities, the investigations show it to possess greater penetrative power of its antiseptic constituents in the presence of nutrient jelly or of animal membranes."

The extracts from the labeling which the libel charged were false and fraudulent and which were sustained by verdict of the jury were as follows: Exhibit B (booklet) "B. & M. (Trade Mark) Formerly Called B. & M. External Remedy For External Applications, Inhalations, Antiseptic, Stimulative, Soothing, Penetrative, Volatile, Alkaline. In the Treatment of Tuberculosis, Pneumonia, Bronchitis, Influenza, Colds, Croup, Rheumatism, Lumbago, Acute and Suppurative Skin Infections. * * * B. & M. (Trade Mark) Formerly Called B. & M. External Remedy For External Use An Antiseptic Alkaline Application Penetrative * * * Respiratory—Circulatory—Stimulative. For Antiseptic Applications and Volatile Alkaline Stimulative Inhalations. In the Treatment of Colds, Influenza, Laryngitis, Bronchitis, Croup, Pneumonia, Pulmonary Tuberculosis, Rheumatism, Lumbago, Acute and Suppurative Skin Infections. Forword * * * its efficiency demonstrated empirically in 1913. * * * The successes (some of them amazing) which have resulted from the use of B. & M. during the past generation * * *

"There is one kind of advertising which never fails, and that is the relief of sickness and suffering before one's very eyes. Upon that kind of advertising, B. & M. depends more than upon anything else. * * * [p. 5.] We are obtaining much information concerning some of the ways in which B. & M. works to do the good which we know from actual and practical use that it has done. We can show some features of it now. Meanwhile, shall we have to wait for centuries—like the doctors did before they prescribed quinine for malaria—until the doctors can prove just how the active principles of B. & M. work, before they will let their patients use it? * * * We base the claims which we make partly upon what we regard as reliable empirical information and partly upon technical scientific findings. * * * What We Claim For B. & M. We claim that B. & M. alleviates much suffering and that it has remedial and therapeutic effect in appropriate cases of the various afflictions in which we recommend its use. We expect better results invariably where the use of B. & M. is combined with other care and treatment by a skilled, conscientious and open-minded physician. We do not claim that B. & M. will make any one live forever or that it will have remedial effect in every case. How B. & M. Works. From unquestionable scientific authority we learn that 'the processes of immunity are essentially chemical processes. . . . We do not as yet know exactly how the various reactions of immunity are established.' The present chemistry of immunity is recognized by what is accomplished, that is to say by empiricism—in the face of almost complete ignorance as to how it is accomplished. [p. 6.] Just so, experience justifies us in saying that we know many things which the use of B. & M. accomplishes even though we cannot yet prove how it does so. Our scientific investigations to date are in accord with medical authority that 'immunilogical defense against many diseases is a chemical defense against a chemical attack.' It is definitely provided that infinitesimal quantities of certain substances give extraordinary results which are sometimes uncannily specific. Does B. & M. do its work this way? We do not know. But we do know that the use of B. & M. as directed brings about chemical reactions in the human body. * * * Germ Diseases. Tuberculosis and many other diseases are known to be caused by germs and are infections. To learn how to control such diseases, we must find out how to prevent the access to and the growth of germs within the body. Theoretically, a simple way of stopping the course of an infectious disease would be to find and administer some substance which will kill the germs but will be relatively harmless to the tissues of the patient. Science is eagerly searching for such substances. The chemo-therapeutic experiments today which promise the best results are said to be those which consider the disinfecting power of drugs, their germ-growth-preventing power both within and without the human body, and the ease or difficulty in penetrating to where the infecting germs are. Mr. F. E. Rollins, who controls the manufacture and sale of B. & M., believes that B. &. M. applied to the skin and inhaled as directed, actually penetrates to the seat of the infection and kills the germs themselves. He is not a physician or a scientist. He has formed this opinion from his own personal experience on himself, by observation of others, and from what he has been told. We want to say frankly that we are not now able to prove by scientific and legally-competent evidence that this is true. Neither has it been demonstrated to our satisfaction that it is not true. [p. 7.] Consequently, while we believe it, yet we desire clearly to be understood as making no claims or representations that B. & M. acts that way. We are spending and shall continue to spend thousands of dollars in research in an effort to find out as much as possible of

the truth. But we do contend that the thing of immediate importance is not so much to find out how B. & M. works. The real question of importance to a sufferer is to find out whether or not it does the work, no matter how. Mr. Rollins became interested in the manufacture and sale of B. & M. only after and because he was convinced that it had saved the life of one who was very near and dear to him and who had been given up to die by the family physician before she used B. & M. Mr. Rollins is equally sure that he, himself, would have been dead years ago if he had not freely and persistently used B. & M. upon occasion. Within three months of this present writing he was suffering from a virulent infection with hemolytic streptococci (and that germ is as bad as it sounds). He applied B. & M. even after it was torture to do so because of the eruptions on his skin which had followed its persistent use. Skin eruptions are always to be expected when B. & M. is used persistently. Today, at the age of seventy-nine, he is in active personal management and control of the F. E. Rollins Company. Every business day he is at its office and elsewhere directing its affairs. * * * Sparing use is useless. The sparing use of B. & M. will not bring satisfactory results. It must be used freely and persistently. We do not say this in order to sell more B. & M., but because the results reported to us show that this is true. We have paid many thousands of dollars for scientific investigations (more than $20,000 during the year preceding the writing of this pamphlet) and they confirm it. We would much prefer that people should not use B. & M. at all rather than that they should fail to get satisfactory results from its use. [p. 8] We are both altruistic and selfish. We do want to sell B. & M. But we have no desire that any one should buy it unless he gets more than his money's worth. Just as a pure selfish business proposition, it would be bad business to hold out expectations which would not be fulfilled. Our business must continue to grow because of satisfied users or not at all. We repeat: There is one kind of advertising that never fails, the relief of sickness and suffering before one's very eyes. Those practical results as noted are supported by the many published scientific reports of investigations on animals and human beings of the effects of some of the principal ingredients in B. & M. These ingredients must be employed in adequate amounts and repeatedly over full periods of the existence of the body conditions which they can alleviate. Physicians also find it difficult to get people to employ remedies which must be applied with religious devotion over considerable periods and in full amounts. That is one reason why powerful remedies for quick action are sought while those of milder kinds giving the better results when taken over long periods are not favored; and yet some of the diseases treated cannot be effectively influenced in short periods nor can the patients stand powerful doses. Let us repeat, B. & M. should be used freely and frequently in acute diseases of short duration and freely and with devoted persistence in those conditions lasting into weeks and months. We would much prefer that people should not use B. & M. at all rather than that they should fail to get satisfactory results from its use.

"Scientific Evidence. [p. 9] There are certain things which have already been brought forth by the scientific research and investigation which have been done for us. In accompanying pages there will be found as careful statements concerning some of these laboratory studies as words in common use will permit. Such language is not that of the scientist nor can we interpret the results of such scientific work as necessarily or exactly those which will take place when B. & M. is used practically. Such studies help us to see ways in which B. & M. acts and especially as to the way it works in the laboratory as compared with other agents. B. & M. under laboratory conditions of testing, will kill certain disease-producing germs commonly employed to study antiseptic action—germs of a kind more than ordinarily resistant to antiseptics and the use of which in such tests has the approval of certain government officials. B. & M. contains certain ingredients which will act antiseptically as just stated even after they have penetrated through jellies and animal membranes such as freshly-killed guinea pig skin, which are frequently employed in the making of such laboratory tests. B. & M. possesses certain ingredients which tend to nullify or to neutralize the acid materials or conditions which develop during and often precede the onset of certain germ infections. The need to neutralize these effects of the growth of certain disease germs in the body tissues is one of the reasons for recommending the free and persistent use of B. & M. for as long periods as these infections last. We are causing further and more elaborate scientific investi-

gations of B. & M. to be made. The results of these investigations taken in connection with reliable empirical information will control all literature which we shall issue in the future. We are determined to make no statement or claim which can justly be criticized. Technical Investigations. In the following pages we will present in as simple language as possible, with photographic reproductions, the results of some of the technical investigations made with B. & M. We do not claim that the conditions inherent in and surrounding the laboratory methods of study are identical with those which exist when B. & M. is applied to the human body. No tests thus conducted could ever hope to duplicate exactly all the variable and changing conditions of natural use. Laboratory tests of these types avoid some at least of the variabilities which exist in people of different body tendencies, past disease histories and unlike conditions of health and disease. These tests serve also to measure the germ-killing effects as compared with those resulting from like testings of other perhaps longer known germicides such as carbolic acid, or preparations of somewhat similar types, which are made according to professionally approved methods and have had legal federal and state recognition for considerable periods. Of still greater importance is the fact that the results of these types of researches can be expressed in relatively precise or graphic forms so that the reader may gather for himself some ideas as to the ways in which B. & M. acts under the conditions of such investigations. Some of the methods thus employed are quite commonly used by modern laboratory investigators, both in official departments having statutory regulation powers over the sale of foods and drugs and in educational and other institutions. Others of the methods were developed by those who have been intensively endeavoring to reveal the scope and limits of germ-killing action of B. & M. and some of the ingredients used in its preparation. [p. 11] B. & M. is recommended to be applied to the skin in its fluid state and without dilution and obviously its first effects result from these direct applications. Hence when the germ-killing powers are subjected to appropriate testing, the results first to be shown should be those obtained from the direct application of B. & M. to germs. The following tabulation shows the number of a certain type of germs found to be still capable of growth in a cubic centimeter (about fifteen drops) of the testing mixtures of B. & M. and water dilutions, after exposing several million of these germs at the temperature of the human body to these mixtures for the number of minutes indicated at the top of each column of the results. The culture of the germs employed in this test is one having federal official recognition and was obtained from a severe case of infection.

"TABLE I

"Tabulation of Results of Test with B. & M. for Germicidal Powers when Direct Contact Exists with the Germs.

Product Tested	Dilution	Number of Germs per c c (15 drops) surviving after:			
		15 sec.	30 sec.	1 min.	3 min.
B. & M.	Undiluted	1,700,000	600,000	950,000	230,000
	1:2	4,000,000	3,500,000	1,100,000	1,100,000
	1:5	42,000,000	33,000,000	22,000,000	10,000,000
	1:10	96,000,000	48,000,000	46,000,000	36,000,000
Control	(Water)	92,000,000	84,000,000	86,000,000	87,000,000

Product Tested	Dilution	Number of Germs per c c (15 drops) surviving after:		
		5 min.	10 min.	15 min.
B. & M.	Undiluted	92,000	16,000	00
	1:2	700,000	260,000	140,000
	1:5	12,000,000	3,200,000	1,000,000
	1:10	24,000,000	12,000,000	4,800,000
Control	(Water)	78,000,000	77,000,000	79,000,000

* To those especially interested in studying in further detail the procedures followed in such tests, copies of the full reports will be forwarded on request.

"These results indicate a speedy and progressively destructive effect of B. & M. upon this species of germ during the first fifteen minutes of contact between them and even when the B. & M. is diluted several times with water. B. & M. is recommended to be used without dilution on the skin except in rare cases and then only with an equal amount of water. As a spray for the nose and throat the dilution recommended is one part to 10 parts of water. Even in this latter dilution the B. & M. solution has a pronounced destructive effect upon the germs in 15 minutes under the conditions employed. Keeping in mind that B. & M. is applied like an ointment or liniment, and it is recommended to be applied full strength repeatedly at each spreading period, usually several times a day, there are presented next the results of a series of tests using a culture of the germ above referred to as from a severe case of suppurative infection and the disease producing powers of which were determined by federal officials. The method of testing is well recognized and the products tested in comparison with B. & M. have legal and official recognition. The germs of this culture are sown in a solidified jelly containing ten per cent of the albuminous fluids of horse blood and possessing a standardized power of promoting growth of these germs when incubated at an appropriate temperature for a given time. The nutrient jelly is solidified in shallow glass plates with removable covers and a hole or cup is made in the center of the jelly into which the B. & M. or the other products used for comparison are placed in measured amounts before starting the incubation. If the antiseptic or germicidal ingredients can penetrate into the jelly before the germs can grow into visible mounds [p. 13] or colonies then there will be zones around the hole or cup showing no spots or colonies of germ growth. The characteristics and the width of these zones of clear jelly will permit the reader to compare the germ affecting powers of the preparations thus tested. The photographic results of three such plates are shown in Plate I. The first (A) represents the results when one-half cubic centimeter (about seven or eight drops) of B. & M. undiluted was introduced into the hole or cup. The second (B) illustrates the results from the introduction into the cup of the same amount of a liniment described officially as Linimentum Ammoniae (U. S. P. IX and N. F. V.). (This is the nearest type of product to B. & M. which has official and legal recognition as having pharmaceutical and therapeutic properties. The amount of ammonia introduced into this official liniment is in excess of that employed in the making of B. & M.) The third (C) illustrates the results from the same amount of a five per cent solution of Phenol (carbolic acid) introduced into the cup. All these plates were incubated for germ growth at a temperature of the human body for forty-eight hours. Obviously from the results occurring under these conditions, as shown by the plates, B. & M. exhibits marked power of preventing the growth or killing these pus-producing germs. This is in contrast to the failure of the official Ammonia Liniment to penetrate into the germ growth promoting jelly with any obvious restraint of formation of mounds or colonies of these germs of special approved type. While carbolic acid in a five per cent solution does penetrate and obviously prevents the growth of the colonies in a definite zone, the effect is not the same as shown for the B. & M. It may be claimed that taking two days for action constitutes too long a period to indicate practical efficiency under the usual conditions of use. In the next series of tests, the time period of contact of these products in the cups in the jelly was reduced to 15 minutes and double the amounts of each of the products were placed in the cups. After 15 minutes, all of the B. & M. and other products which could be, were carefully removed from the cups and then the plates were incubated for 48 hours with the results shown in Plate II. B. & M. is recommended for repeated application. In Plate III are the results of another series of three photographs with two applications of each of the three products three hours apart and left in the cups for 15 minutes each and then removed as far as possible. * * * While these results might not be considered as constituting proof that the antiseptic ingredients of B. & M. would penetrate into the tissues of the human skin to the same degree as they do into the germ nutritive jelly, other lines of scientific research go further towards indicating penetrative power. Scientists devoting much time to B. & M. problems developed a form of apparatus in which the germs of disease inoculated into a moving portion of blood without the colored cells, i. e., the serum, or a moving flow of beef broth standardized to promote the growth of the germs, are brought into contact with an animal membrane covering the outlet of a jar containing the B. & M. or other products under investigation. Thus the flow of germ-containing blood serum [p. 23] or broth passes

one side of the animal membrane and on the other side of the membrane is the application of the B. & M., the official liniment or other product being tested. There is no possibility of interchange of fluids except through the animal membrane. The temperatures of the serum or broth and of the membrane at the point of treatment are substantially those of the skin of the human being. The culture of germs used in the first series of such tests employing this Membrane Penetration Apparatus was the same as already mentioned as having a degree of infection power recognized by federal officials. The time period of such contact of each of the flowing fluids with the membranes having one of the products under test on the opposite side has been six hours. Chemical and germ tests of samples of the infected fluids were made at hourly intervals or oftener. In Table II will be found the results of two tests in which B. & M. was the product placed on the upper side of the animal membrane of parchment, in this case Goldbeater's skin. In test (A), the infected circulating fluid was undiluted blood serum taken from a normal horse. In test (B), the infected fluid was standardized nutrient beef broth.

"TABLE II

"Tabulation of Results showing the number of surviving Germs in (A) Circulating Infected Horse Serum and (B) Circulating Infected Beef Broth, after Flowing Over Animal Membranes with Undiluted B. & M. on the Opposite Sides of the Same.

Time in Contact		pH	Test A Numbers of Surviving Germs	pH	Test B Numbers of Surviving Germs
Start of test	acid	6.7	3,200	6.5	3,900
	neutral	7.0			
1 hour	alkaline	9.1	3,100	10.2	3,000
2 hours		9.1	3,400		1,200
3 hours			3,200		10
4 hours			3,000		0
5 hours			810		0
6 hours		9.3	290	10.2	0

"In Table III will be found the results of one test in which Ammonia Liniment (N. F. V.) was the product placed on the upper side of the animal membrane.

"TABLE III

"Tabulation of Results showing the Numbers of Surviving Germs in Circulating Infected Horse Serum after Flowing Over the Surface of the Animal Membrane (Goldbeater's Skin) with Ammonia Liniment on the Opposite Side of the Same.

Time in Contact		Reaction as pH	Numbers of Surviving Germs
Start of test	acid	6.8	4,900
	neutral	7.0	
1 hour	alkaline	9.0	4,500
2 hours		10.6	3,600
3 hours			4,200
4 hours			2,900
5 hours			3,100
6 hours		10.6	3,100

"[p. 25] Thus in tests with this apparatus, there have been found not only substantial reductions in the numbers of living germs in the circulating broth or serum, amounting in some cases to evidences of complete sterility within six hours or less, when B. & M. was employed, but chemical tests applied to small samples of the flowing fluids at fixed time periods during the investigation, give conclusive evidence of penetration through the membranes of volatile alkaline ingredients of these products. It was remarked earlier that the germ employed in the tests, the results of which have been reported was one of more than ordinary powers of resistance to antiseptics. It was deemed advisable to make

a short series of comparative tests with B. & M., Ammonia Liniment and phenol (carbolic acid) solution upon germs of a less resistant type but none the less of a kind capable of producing skin and other infections. Such a germ is technically described as a hemolytic streptococcus. There are presented next the results of such a series of tests conducted in the Membrane Penetration Apparatus already mentioned.

"TABLE IV

"Tabulation of results showing the Number of Surviving Germs in Circulating Horse Serum Infected with a Hemolytic Streptococcus after Flowing Over Animal Membrane with B. & M., 5 per cent solution of Phenol (carbolic acid) and Ammonia Liniment (N. F. V.) on the Opposite Side of the Same.

"Numbers of Surviving Germs after Treatments Indicated

Time in Contact	B. & M. (Undiluted)	Phenol 5 per cent	Ammonia Liniment (Undiluted)
Start of Test	4,000	2,900	2,900
1 hour	630	1,800	1,650
2 hours	0	1,500	140
3 hours	0	380	0
4 hours	0	0	0
5 hours	0	0	0
6 hours	0	0	0

"Thus there has been developed a body of evidence of the power of certain ingredients of B. & M. quite readily to penetrate animal membranes. A conservative scientific point of view may not perhaps warrant a claim for a like result in the living human being; however, there would appear to be no reason to doubt the power of penetration of some of the antiseptic factors of B. & M. well into the layers of living skin. When B. & M. is employed as directed, noticeable amounts of ammonia are given off and some are inhaled. Any one familiar with the fumes of ammonia will at once recognize, taking a careful whiff of B. & M., that the odor is not merely that of ammonia. Ammonia is known to have a measure of germ killing and growth preventing power depending upon its concentration. It is also the experience of every one that too great strengths of ammonia fumes are very irritating to the membranes lining the nose and to a much lesser extent the noticeable effects on the mouth and throat.* By reason of the special combination of ammonia in B. & M. the rate of liberation of ammonia fumes is somewhat retarded and the total period of release is thus prolonged with lessened irritation. The question will naturally be raised, do B. & M. fumes possess antiseptic [p. 27] powers and if so are such effects due to the ammonia used in its production, or to some other volatile ingredients or both? It was considered desirable to determine whether the fumes liberated under certain conditions from B. & M., possessed stronger antiseptic powers than the fumes from the official ammonia liniment or an ammonia solution in water of the same general strength. Accordingly a frequently used system of testing fume antiseptic effects was employed. In it the germs of the species, race and virulence first mentioned above were soaked on to filter paper strips; these were confined in sealed glass jars in each of which was the same amount of one of the products already mentioned (B. & M., Linimentum Ammoniae N. F. V., and also a watery solution of Ammonia carrying the same amount of free ammonia as B. & M.). At various time periods of exposure of the germ-laden strips of paper to the fumes of these products, a strip was removed from a jar and the number of living germs on the strip determined by the usual laboratory methods. The results as shown in Table V are most interesting.

* The recommendation that B. & M. be inhaled through the mouth several times a day is based in part upon the easily observed fact that when inhaled through the mouth but little irritation occurs as compared with the effects on the more sensitive linings of the nose.

"TABLE V

"Tabulation of Results Showing the Numbers of Surviving Germs on a Strip of Filter Paper Infected and Exposed to the Fumes from B. & M., Ammonia Liniment N. F. V., and a water solution of Ammonia containing the same amount of Free Ammonia as in B. & M.

Product Used	Number of Germs per Strip Surviving After:			
	5 minutes	10 minutes	15 minutes	20 minutes
B. & M., Undiluted	1,500,000	1,200,000	350,000	210,000
Ammonia Liniment, N. F. V	2,400,000	6,600,000	1,600,000	42,000
Ammonia Water contains 5% free Ammonia	850,000	490,000	600,000	800,000
Control Water	15,600,000	15,100,000	21,500,000	21,300,000

Product used	Number of Germs per Strip Surviving After:			
	1 hour	2 hours	6 hours	24 hours
B. & M. Undiluted	5,000	0	0	0
Ammonia Liniment, N. F. V	8,500	10	0	0
Ammonia Water contains 5% free Ammonia	27,000	360	0	0
Control Water	13,600,000	37,000,000	74,000,000	140,000,000

"B. & M. fumes did not kill as many germs at the start as did the fumes from the Ammonia Solution, but they soon caught up and the evidence shows that all of the germs exposed to the volatile substances in B. & M. were rendered incapable of growth earlier than they were from the vaporizations from the other products. Thus it is clear that B. & M. does not act quite the same as do these other products, especially the ammonia water, containing five per cent free ammonia. It might not be scientifically sound to conclude from these results that the fumes arising from B. & M. as applied according to directions would destroy in the same length of time, the same numbers of the same race of germs in the membranes and their secretions, of the nose, throat, and of the tubes of the lungs in the living human being. The living conditions are not necessarily the same. The full strength of fumes in each of the jars might be very irritating, [p. 29] especially to the membranes of the nose, particularly if inhaled for the same long periods of time. However, the body defenses as a rule need but little added help to exclude or overcome the germs after they have gained entrance into the tissues. If now germs are even but slightly injured by antiseptics, the powers of resistance of the tissues may be much supported. If the injuries to the germs are repeated frequently, and if the living tissues or their secretions around the germs are rendered more or less unsuited for the further growth or existence of the germs, the balance between germs and body resistance may be readily turned in favor of the latter by even traces of antiseptics frequently applied and especially if these antiseptics are alkaline in character and can exist in small amounts in the tissues and fluids of the body and aid in the correction of the abnormal states created by the growth of the germs in the body. By all laboratory methods of determination of antiseptic efficiency published here, B. & M. has shown superiority over Linimentum Ammoniae N. F. V., and over the effects of the equivalent solutions of ammonia in water. The results of these tests also bring out that the fumes from B. & M. are not as concentrated as to either alkalinity or antiseptic potency at the first stages of their volatilization as they are in the second stages, indicating a more balanced or controlled distribution of the effective fumes than the results from the fumes of the official liniment or the ammonia solution in water. The fumes from B. & M. may be expected therefore to be less quickly and easily dissipated into the atmosphere when employed practically and exert their effects over longer periods through opportunities for inhalation than those of the official liniment or plain ammonia water, containing the same amount of free ammonia, as B. & M. Thus the fumes of B. & M. do not have the same capacity at the outset for nasal membrane irritation but possess longer and more effective antiseptic and alkalinizing influences than the other two products. To these superiorities, the investigations show it to possess greater penetrative power of its antiseptic constituents in the presence

of nutrient jelly or of animal membranes. We do not claim that the results of these investigations suggest definite explanations for the effects of B. & M. in the diseased and other conditions listed on the bottle, label, and carton associated with this booklet. The tests would appear however, to indicate that B. & M. exerts measures of influences in several directions and that to them and perhaps to others, the mechanisms which have not as yet been thoroughly considered, may be attributed the empirical results noted by thousands of users of B. & M. when employed by them as directed. As was stated at the start, the scientific studies of the effects of B. & M. and its constituents will be vigorously continued. The favorable empirical results call for scientific explanations, not merely to protect the merits of the product from official attacks but for the enlightenment of those users (past and prospective) whose inquiring minds seek grounds for reaching their own conclusions regardless of changes in medical opinions and customs.

"Directions and Practical Information. [p. 10] Lung Tuberculosis. Since it was discovered that the persistent, devoted use of B. & M. would be beneficial in the treatment of pulmonary tuberculosis, we have made every possible effort to have it employed by just as many cases as possible. Some physicians having noted its favorable results have employed it in other cases with equal effects. The patients and their friends must, however, be prepared patiently to do their parts, for no treatment of this disease works rapidly to the final result. However, B. & M. gives great relief after the first few weeks and progress toward recovery is undoubtedly hastened by careful devotion to its free and persistent application according to directions. We cannot emphasize too much the need to follow the directions religiously. There are many reasons why this advice must be emphasized. In this disease, the condition of the lungs produced by the invading germs is of fundamental importance. The germ of tuberculosis is of course the original cause of the first evidences of the disease. The body tissues endeavor to build up walls around the places where these germs grow. The germs secrete their poisons which injure the surrounding tissues and further walls are constructed to confine the disease. These poisons and the effects of them on the nearby tissues tend to bring about those evidences, those symptoms of the disease, which are recognized by the tired feeling, loss of appetite, anemia, emaciation, increase of temperature, rapid pulse, etc. The walling off of the disease helps to keep it in check. These walls also make any direct attack upon the diseased area difficult. The central portions of these areas being walled away from the blood 'break down' and if the protective wall becomes thin because the body resistance is not equal to the building up task, then the bronchial tubes in the lungs may be charged with the decayed disease tissue and its germs and be expectorated along with the mucus, the formation of which is started up and continued as the germ poisons spread out from the infected spots. The presence of the germ of tuberculosis is bad enough but if the patient is susceptible to other germs such as those of pus formation, these too often become grafted upon the tuberculous [p. 12] tissue and near it and we have mixed infections. In these the tissues break down more rapidly and the disease goes into its more severe stages. Anything which tends to build up the patient toward resistance, not only to the germs both of tuberculosis and of pus formation, but to the effects of them and their poisons which inflame the surrounding tissues may throw the balance in the fight between the germs and the body powers of resistance over on the side of the patient. We commend all efforts toward such building up of resistance. We believe that the persistent use of B. & M. as recommended gives great aid toward that end. It undoubtedly stimulates the blood circulatory mechanism with which it comes into contact. It helps to open up those lung areas which may have collapsed and in which the life processes have stagnated, if it can be brought into contact with them. It helps to soften and even liquefy the thick tenacious mucus of secretions produced by secreted poisons, when its fumes reach to the areas where these secretions are present. It is alkaline in character and will therefore tend to nullify the acid products of infection. It has germ injuring and killing powers when it comes into contact with the germs. Its fumes undoubtedly injure germs even when they do not kill them because they are not sufficiently concentrated. Repeating the injury of germs and the making of the environment of them unfavorable for their growth will in time give the body resistance support and the germ progress is stayed. This once definitely hindered, progress toward recovery starts. The living body has large reserve powers toward health and it employs one at least of the ingredients in B. & M. in its defense against some of the products of germ growth in tissues. B. & M. thus supplies an extra amount of one of nature's

protective elements in our bodies. This is one reason why we must freely use the B. & M. with persistent regularity just as long as evidences of disease continue. We must help the body keep up its resistance and we can no more do it in one or two treatments than we can eat food once a week and hope to be well nourished. General Directions for Use. For small or mild infections, with light pressure of the hand spread the B. & M. freely and evenly at least six times upon [p. 14] the affected parts, making each successive spreading before the preceding one is dry. In like manner, apply at least twice daily, or as often as may be practicable. For large or acute infections, during the first day or two of treatment, make the applications every two or three hours, each of a dozen or more spreadings. Wipe or sponge off the treated surface when absorption appears sluggish. The first spreading of each application over eruptions or sores causes smarting, increasing as the nerves become more sensitive from the continued irritation. Later, the smarting becomes less severe. After the first spreading, many more can be made of full strength without the initial sting. We would expect two daily applications of twelve spreadings each to accomplish as much as three daily applications of six spreadings each. A little residue remaining may cause some itching, irritation or in some measure hinder subsequent action. Sponge off the treated surface with lukewarm water when the sixth spreading is nearly dry; if the skin is irritated, apply Ex-Rem Ointment immediately. No effort should be made to heal eruptions; complete healing follows during the applications of B. & M. For Tuberculosis of the Lungs. The patient should lie down. Pour the remedy upon the surface to be treated and spread as before directed upon the throat, chest, sides and back over the entire lung area, using two ounces or one-fourth of a large bottle. In like manner apply at least three times daily if at all practicable. In our opinion, one daily application is not sufficient; two daily applications will make some gain, and three are necessary to rapid progress. If the fumes are troublesome at full strength, the breath may be held until they are partly diffused; then breathe and inhale through the mouth. Frequent inhalations between the applications are very helpful. In treating children who cannot follow directions for breathing, or people too weak to inhale the fumes, a wet towel over the nostrils will prevent excessive inhalation, or a screen (a newspaper will serve the purpose) may be held in a perpendicular position with the lower edge against the chin and jaws. [p. 16] For very young children, half strength may be used. Dilute with water. The remedy does not cause hemorrhage; if one occurs, suspend the applications until the flow of blood ceases, thus avoiding stimulation of the circulation. Mere streaks of blood in the sputum should not interrupt the treatment. Dislodging the mucus from the healthy tissues is like tearing the scab from a sore—a little blood follows. The cough is the pump which draws foreign matter out of the lungs; it may be severe and dry until B. & M. has softened and liquefied the consolidated matter. Easy coughing with free expectoration indicates that the clearing process is going on and should continue until completed. A change in the sputum to a lighter color and catarrhal character indicates that healing has begun. The newly-healed parts of the lungs are tender and susceptible to new infection. One daily application of B. & M. for six or eight weeks after the coughing and expectoration cease may be used as a preventive measure and as an aid to the development of better resistance. For two or three months, care should be exercised to avoid colds or exposure to extremely low temperatures. Tuberculosis of the Throat. This is often one of the seats of tuberculosis in those in an advanced stage of the disease of the lungs. In such cases, applications as directed and frequent inhalations of B. & M. may alleviate the distress. In cases of laryngitis without infection of the lungs, continue the treatment with B. & M, as indicated for bronchitis as long as relief is afforded. A spray consisting of one part B. & M. and ten parts of water used in an atomizer made without metal may be used frequently. Tuberculosis of Cervical (Neck) Glands. A common treatment is removal. If this is not done, apply B. & M. regularly and freely as long as swelling remains. Tuberculosis of the Joints. The elimination of the disease in advanced stages is generally very slow. Treated with B. & M. by frequent, free [p. 18] applications over the affected area relief, if not complete recovery, may be expected. For Tuberculosis of Other Parts of the Body. Apply as above to the parts affected. For Mixed Infections. As has already been stated these cases usually occur in those with less resistance to more types of germs. They call for the most vigorous and persistent treatment. If the skin soreness becomes so great that appli-

cations to the lung area cannot be reasonably endured, they may be suspended for two days and made to the abdomen, the back and the lower limbs while Ex-Rem Ointment is freely applied four times daily to the sores. This will reduce the soreness so that applications of B. & M. to the lung area may be resumed with less discomfort. Apply to the lung area if practicable, but continue applications somewhere. As in treating tubercular infections, one daily application will accomplish nothing; two will accomplish a little, and three will make for good progress. After the skin is entirely healed, applications to the lung area should be continued until the consolidations are entirely cleared from the lungs and the fullest breathing capacity possible is restored. These applications will cause no discomfort nor will they prevent engaging in the ordinary activities of life. Caution. Do not rub with pressure—avoid irritation. Do not bandage or cover the surface before it is dry—avoid blisters. Do not allow any considerable thickness to remain on the skin—spread immediately. * * * Applications should not be made in a cold room, nor the patient exposed to drafts during treatment. Exposure of the treated surface to cold should be avoided for a short time after treatment in the same manner as after perspiration. * * * Pneumonia. [p. 20] This disease of the lungs is of two kinds. One is an extension of bronchitis and is commonly called broncho-pneumonia. The other is an inflammation of one or more of the natural lobes or sections of the lungs. This is called lobar pneumonia and is quite a special form or a group of conditions of the disease. In this form a favorable ending of it is indicated by a sudden dropping of the temperature. In both forms and especially in the pneumonias of newly born infants, the disease tends to develop in those portions of the lung which are in a state of collapse with a degraded condition of the tissues. The use of remedies which tend to cause stimulation of the breathing mechanism whereby these collapsed lung areas are led to expand and for the living processes and the blood circulation of the tissues to become more active, have scientific recognition. Experience with the use of B. & M. in pneumonia cases gives clear pictures of prompt relief from some of the most distressing symptoms with easier breathing, lower temperatures, more sleep, etc. B. & M. must be well adapted to favorably influence the course of this disease to bring about these changes so promptly. Obviously the earlier the B. & M. is applied, the more effective it is. In a court trial where the question of the truth or falsity of a statement in a previous edition of our booklet was in issue, this statement read as follows: 'So far as many tests have determined, B. & M. External Remedy properly applied will reduce the temperature and take the patient out [p. 22] of danger within twenty-four hours after the first application. No failure as far as we are informed. If the remedy is used when the first symptoms appear there will be no development of the disease; if used after development, the disease in a mild form may run its usual course.' The Court said: 'I feel there is abundant evidence which will justify the defendant in making that statement. Not wishing to express an opinion as to the efficacy of this remedy for Pneumonia, I believe it is possible for reasonable men to come to that conclusion, particularly after listening to the testimony of Mr. Philbrick, who, to my mind, was as fine and impressive a witness as I ever heard in court, and a man whose honesty and integrity could not be challenged by any reasonable man. His testimony would justify a layman—and apparently the National Remedy Company was represented only by laymen—in coming to that conclusion; and there has been a good deal of other evidence which would warrant a similar conclusion.' Directions for Use in Pneumonia. Apply B. & M. hourly in the same manner as for tuberculosis of the lungs, at least six times, then every three hours until the temperature falls. Then at least daily until complete convalescence. Influenza. The epidemics of 1918–19 and later years will not soon be forgotten, nor the fact that the best efforts of physicians and nurses, in some cases to the point of the supreme sacrifice, have often been unavailing to save the thousands who were victims of this disease. Medical scientists have carried on an enormous amount of investigation, but have not yet been able to determine with certainty the primary producing cause of this disease. The influenza bacillus has been found in most cases examined, but it may be a secondary invader. At any rate that germ, though comparatively very small, is very poisonous and multiplies very rapidly. Use B. & M. freely in attacking a large area at once. We recommend hourly applications to the entire trunk of the body until the fever is abated followed by three daily applications until the temperature is normal. Then use as after Pneumonia. At two court trials six witnesses testified to complete [p. 24] recoveries from Influenza or

Influenza-Pneumonia. At one trial the truth or falsity of a statement in a previous edition of our booklet was in issue; the statement read as follows: 'So far as we are informed there has not been a fatality in any case properly treated with B. & M. and we submit the inference is fair that the record would have been the same in all other cases if the remedy had been used. If at the first onset of Influenza applications be made to the entire trunk of the body and continued fifteen or twenty minutes until every part and every drop of blood is reached, it is believed that the work of the Influenza germs will be quickly arrested; but the gateway to the lungs being opened to other germs, it is recommended that five or six further applications be made hourly and others at longer intervals.' The Court said: 'There is abundant evidence to justify making that statement. There is the testimony of Mrs. Hammond that she applied this remedy where there was no other physician's help at hand, and there is the testimony contained in the letters of Mrs. Leitch to that effect, which would necessarily lead to the conclusion that B. & M. has caused these cures and would at least justify a reasonable man in coming to that conclusion.' At the trial in Concord, Mrs. Emma R. Hammond of Keene, N. H., seventy-four years of age, largely experienced in nursing, held the fixed attention of judge, jury, lawyers, court officials and others present while she told a remarkable story of her work as a church visitor among the people of her city during the Influenza epidemic. Many were suddenly stricken. Physicians and nurses were completely overwhelmed. Many of the patients died. One family of five persons all died without a doctor. Mrs. Hammond was supplied with B. & M. by her pastor who had learned about it in another city. From early morn until late at night and sometimes far into the night, she sought out the sick who were unable [p. 26] to obtain other help. She remembered thirty-one families to whom she ministered; she estimated between 112 and 120 persons to whom she applied the remedy once, and to all but two of them more than once. There was one case in each of two families and from three to nine in all the others. Some of the patients were in a far-advanced stage of Influenza-Pneumonia. Mrs. Hammond did not lose a case. Subsequently, as opportunity offered, she supplied B. & M. to eight well-advanced tubercular cases. December 7, 1922, six had completely recovered and the other two apparently were making good progress. Two testified in Court and the others were willing to do so. * * * Bronchitis. This is an infection of the bronchial tubes, the progress of which ought to be quickly arrested. Apply B. & M. to the chest and back over the tubes as for tuberculosis at least twice daily. More frequent applications will secure more rapid recovery. This disease is very common, a great many cases have come to our attention, and relief has occurred when B. & M. has been properly used. The infection is frequently due to the streptococcus, but may be due to other types of germs. Whatever the type, plugs of mucus adhere very tenaciously to the tube lining. As in tuberculosis, applications of B. & M. should be continued until the mucus in the tubes is softened and liquefied so it can be easily expectorated. Pleurisy. Pleuritic pains have subsided while the remedy was being applied. Applications of B. & M. should be made over the seat of the pains and should be made freely and frequently until relief is obtained and then at somewhat less frequent intervals. Asthma. There are several varieties of this disease. Whatever the type, in acute attacks, apply the remedy freely to the throat, [p. 28] chest and back half-hourly until the breathing becomes less labored. Inhale frequently through the mouth or use the spray (one part B. & M. and ten parts water in an atomizer without metal parts). For the neurotic type, apply to the entire length of the spinal cord three times daily. For the bronchial type, apply to the chest and back as for bronchitis until the bronchial tubes seem to be cleared. For a long time we suggested B. & M. only for the bronchial cases. We had little hope of helping the spasmodic cases. About seven years ago, the experiment was tried of making applications to the back from the hair of the head to the end of the spine. The trouble was reached and there was immediate relief; the patient was able to sleep that night and to return to his work the next day. A short time later, there was a slight attack immediately relieved by B. & M.; since that time we have heard of no recurrence. Cold and Coughs. If a simple head cold, apply to the forehead, temples, and about the ears frequently, inhaling freely through the nose. If throat and lungs are affected, apply also to the throat and chest, inhaling through the mouth or using the spray (one part B. & M. in ten of water used in an atomizer with no metal parts). If the remedy is used when the first symptoms appear, relief is almost immediate, and the trouble will be confined to the point of infection. Colds are often arrested over night. If the cough is

due to foreign matter in the bronchial tubes or lungs, we should expect it to disappear when the foreign matter is brought out. If the cough is due to some forms of pressure or chemical irritation, B. & M. may not give relief. Croup. Several parents have reported the ordinary experience of being awakened at night by the cough of a child incident to a severe attack of croup, followed by the extraordinary experience of immediately relieving the child by the use of B. & M. with only a slight interruption of their sleep. Directions: Apply to the throat and upper chest. Place a cloth with B. & M. upon it where the fumes may be inhaled. Whooping Cough. Paroxysms are often promptly relieved by frequent applications of B. & M. to the throat and upper chest.

"Rheumatic Fever. There are few diseases which cause more acute pain and lasting effects [p. 30] than rheumatic fever. Frequently patients are much disturbed even by the movement of attendants across the floor or laying a hand upon the bed. Not many first attacks are fatal, but, as a result of careful study of many cases, it is said that recurrences reach as high as 93.4 per cent in children between five and ten years of age, and not less than 50 per cent in people more than twenty-five years of age; that the second attack comes about four years after the first and the average case progresses to a fatal termination in about fifteen years; that the cause of death is not infection of the inflamed joints, but the continued or repeated infection of the heart which cripples or kills the patient; that the germs create an infection of the heart valves which heals and leaves scar tissue reducing the flexibility of the valve and preventing normal action; that each successive infection increases the defect and leakage. If B. & M. is properly used at the first attack the infection of the valves may never occur. Physicians and trained nurses have expressed great astonishment at results from using B. & M. External Remedy in this disease. To allay the fever, pain and inflammation in a week is beyond belief to the physician who has not seen with his own eyes. The rapidity of recovery will largely depend upon the quantity and frequency of application. We suggest an hourly application of at least six spreadings over all affected parts (sometimes the whole body) during the first day, and four or more times daily until the fever and inflammation disappear. Rheumatism. In its acute stages, B. & M. External Remedy will help to allay inflammation of joints or muscles. In chronic cases, of course, it is not claimed that chalky deposits in the joints will be removed, but the inflammation and pain may be expected to disappear and the joints become more flexible. Apply twice or more daily, spreading the remedy over the affected parts four or more times at each application. The reports of the results from using B. & M. in this disease would fill a large volume. Deformed joints have not been restored to normal, but inflammation and pain have been allayed and the lame enabled to walk. A man called at the company's office, walking with great difficulty by the aid of an umbrella used instead of a cane. Every joint except those of the left elbow and hand was badly swollen; inflammation had so crowded the right wrist joint that it was immovable and the fingers were capable of but little motion. At the first application a full bottle was used and daily treatments continued until at the end of four weeks, every trace of the rheumatism had disappeared and every joint was moving normally. A man upwards of fifty years of age had not been able to work for three years, and was told by his physician that he would never walk again. B. & M. was used and he resumed his old employment which required him to be constantly on his feet. Neuritis. Inflammation of the nerves has been quickly relieved by applying four or more spreadings of the remedy twice or more daily. The nerves, like an electric circuit, may be affected at one point while the cause is at another point quite remote. Frequently the pain is in the arm when the cause is [p. 31] in the back of the neck, or a little below, due to inflammation of the nerve cell near the spinal cord. Several cases have been reported to us in which the remedy was applied to the arms without success, but when applied to the back of the neck and between the shoulders relief quickly followed. Lumbago (Rheumatism of the Lumbar Region). Speedy relief follows the use of B. & M. in cases of Lumbago. Apply freely at least twice daily. * * * After a blow upon the knee with a hammer which in another case had produced synovitis, or water on the knee, B. & M. was applied and the carpenter continued at his work. * * * Boils. Apply freely at the first indications of infection. If the disease has gained headway, frequent, free applications have produced prompt results. B. & M. is of special value in these cases. Spreading Skin Infections ('Blood Poisoning'). Blood poisoning caused by infection from a pin-prick, scratch, etc., requires very prompt attention. Spread the remedy upon the part affected for twenty or thirty minutes, then apply hourly until

pain and inflammation are relieved. A lady was suffering from infection due to a pin-prick of the thumb. The hand and forearm were badly swollen and pain extended to the shoulder. Her physician treated the hand and arm with B. & M. The pain disappeared within three hours, and the swelling was gone the next morning. A surgeon slightly pricked his thumb while opening an abscess. Within thirty minutes the infection was painfully apparent. B. & M. was used, relief quickly followed, and the danger point was soon passed. A blister upon the heel was pricked at night; the next day the foot and leg became painful and late in the afternoon walking was very difficult. The first application of B. & M. was continued thirty minutes. Inside of four hours the pain was relieved, and on the following morning the swelling had disappeared. A cook had severely scalded his arm and virulent blood poisoning quickly followed to the danger point. In the early evening a physician was called who prescribed immediate and diligent use of B. & M. The following morning when the doctor called, the pain and swelling had subsided and the patient was at work. [p. 32] Pain and Inflammation. Possibly some fortunate ones have never suffered from any specific disease, but nobody has escaped pain and inflammation. We have heard of no accessible inflammation treated with B. & M. which did not quickly subside. We have many statements from people who know by experience. A physician and surgeon, an ex-captain in the army medical service, set the bones of a wrist which had been fractured in cranking an automobile. The usual severe swelling and a sleepless night followed. The next day the doctor saturated the swollen parts with B. & M. and gave the patient a bottle with instructions to continue the treatment. The pain subsided before bedtime; nine hours' sleep followed. The next day the wrist was nearly normal in size, and no pain to speak of. A young lady fell on a piece of furniture, breaking the collar-bone and two ribs on the right side. B. & M. was used and within a week the patient returned to her office employment using her left hand, but practically free from pain;"

(carton) "B. & M. * * * For Application in the relief of pain and irritations in Inflammatory and muscular Rheumatism, Neuralgia, Neuritis, Sciatica, Lumbago, * * * Stiff Joints, Swellings, * * * Acute and Suppurative Skin Infections, * * * B. & M. Applied Externally and Inhaled as directed, affords rapid relief and greatly tends to shorten the course of Colds and other Acute Infections of the Respiratory Tract. Persistance in its Use is Essential. B. & M. * * * For Application and Inhalation in the Treatment of Tuberculosis, Pneumonia, Influenza, Pleurisy, Bronchitis, Laryngitis, Coughs, Colds, Catarrh, Hay Fever, Croup, * * * B. & M. properly, persistently and Externally Applied in the treatment of Influenza, Pneumonia, and Pulmonary Tuberculosis, is a valuable adjunct to the skillful Physician's Internal and Environmental measures;"

(bottle label, small) "B. & M. * * * For application and inhalation in the treatment of: Coughs and Colds, Bronchitis, Croup, Influenza, Laryngitis, Pneumonia, Pulmonary Tuberculosis. For Septic Skin Infections * * * For full directions and information please read the booklet which accompanies this bottle. Directions Generally: with light pressure of the hand, spread freely and evenly six times or more over the affected parts. * * * Applied once daily—little effect. Applied twice daily—more effect. Applied thrice daily—much greater effect. Applications should be continued wherever eruptions appear. Lung Infections: It is well to lie down during application. Apply as above to the entire lung area, front and back. Pneumonia: Apply as above hourly or every two hours, making a dozen or more spreadings at each application, if the condition of the patient will permit, until the temperature falls; then four times daily until the lungs seem cleared. Influenza: Apply as for pneumonia to the entire trunk of the body. Asthma: See booklet. Tonsilitis: Apply to the throat, neck, and about the ears at least three times daily. Spray the throat with a solution containing one part B. & M. and ten parts water, using an atomizer without metal, or inhale frequently through the mouth. Bronchitis, Laryngitis, Coughs and Soreness of the Throat or Chest: Apply to Throat and chest three times daily; spray the throat, or inhale through the mouth. Head Colds and Nasal Catarrh; Apply to forehead, temples, throat, and about the ears; spray throat and nose, or inhale. Rheumatism, Lumbago, Neuritis: Apply three times or more daily over the painful parts. Septic Skin Infections: Apply over the affected parts continuously twenty minutes or more; then in the usual manner hourly until relieved. Neuralgia, Sprains, Chilblains, Scalds, Burns, Sunburn, Bites of Insects, Local Injuries, Pain or Inflammation: Apply to the painful parts as soon as possible. Head-

aches: Apply to forehead, temples, about the ears or at seat of pain, inhaling freely through the nostrils and mouth. Do not bandage or cover surface until it is dry;"

(portion of large bottle labels) "B. & M. * * * External Remedy A Chemical Compound for Tuberculosis, Pneumonia, Laryngitis, Bronchitis, Pleurisy, Influenza, Hay Fever, Asthma, Coughs, Colds, Catarrh, Rheumatism, Lumbago, Neuralgia, Neuritis, Peritonitis, Neurasthenia, Blood Poisoning, Varicose Veins, * * * Swelling, Stiff Joints, * * * Bites of Poisonous Insects;" (on all small bottles and portion of large bottles) "Directions Generally: With light pressure of the hand, spread freely and evenly six times or more over the affected parts. * * * Applied once daily—little effect. Applied twice daily—more effect. Applied thrice daily—much greater effect. Applications should be continued wherever eruptions appear. Lung Infections: It is well to lie down during application. Apply as above to the entire lung area, front and back. Pneumonia: Apply as above hourly or every two hours, making a dozen or more spreadings at each application, if the condition of the patient will permit, until the temperature falls; then four times daily until the lungs seem cleared. Influenza: Apply as for pneumonia to the entire trunk of the body. Asthma: See booklet. Tonsilitis: Apply to the throat, neck, and about the ears at least three times daily. Spray the throat with a solution containing one part B. & M. and ten parts water, using an atomizer without metal, or inhale frequently through the mouth. Bronchitis, Laryngitis, Coughs and Soreness of the Throat or Chest: Apply to throat and chest three times daily; spray the throat, or inhale through the mouth. Head Colds and Nasal Catarrh: Apply to forehead, temples, throat, and about the ears; spray throat and nose, or inhale. Rheumatism, Lumbago, Neuritis: Apply three times or more daily over the painful parts. Septic Skin Infections: Apply over the affected parts continuously twenty minutes or more; then in the usual manner hourly until relieved. Neuralgia, Sprains, Chilblains, Scalds, Burns, Sunburn, Bites of Insects, Local Injuries, Pain or Inflammation: Apply to the painful parts as soon as possible. Headaches: Apply to forehead, temples, about the ears or at seat of pain, inhaling freely through the nostrils and mouth. Do not bandage or cover surface until it is dry;"

(on remainder of large bottle labels) "B. & M. * * * External Remedy A Chemical Compound for Tuberculosis, Pneumonia, Laryngitis, Bronchitis, Pleurisy, Influenza, Hay Fever, Asthma, Coughs, Colds, Catarrh, Rheumatism, Lumbago, Neuralgia, Neuritis, Peritonitis, Neurasthenia, Blood Poisoning, Varicose Veins, * * * Swellings, Stiff Joints, * * * Bites of Poisonous Insects. * * * For Tuberculosis of the Lungs—While the patient is in a recumbent position, pour the remedy upon the surface to be treated, and with light pressure of the hand, spread freely, evenly and continuously six times or more upon the throat, chest and back down nearly to the waist line, using at least one-third of a large bottle. In like manner apply twice or more daily. Inhale frequently through the mouth. Use double quantity at first application. Wipe or sponge off what remains on the treated surface when the last spreading is nearly dry. For Tuberculosis of Other parts of the Body—Apply in like manner to the parts affected. For Pneumonia and Asthma—Apply as for tuberculosis of the lungs at least hourly until six or eight applications are made; then at intervals of three or four hours until relieved. Use double quantity at first application. Continue applications at least twice daily until recovery is complete. Inhale frequently through the mouth. For Influenza and La Grippe—Apply over chest, throat, bowels, back and other painful parts as in pneumonia. For Laryngitis, Bronchitis, Coughs, Soreness of Throat or Chest—Apply to throat and chest at least twice daily, inhaling frequently through the mouth. For Hay Fever, Catarrh or Head Colds—Apply to forehead, temples, both sides of the nose and throat if affected, inhaling frequently through the nostrils. For Rheumatism, Lumbago, Locomotor Ataxia, Neuralgia, Neuritis, Neurasthenia (due to inflammation), Varicose Veins, * * * Stiff Joints, * * * Apply twice or more daily to the affected parts. For Blood Poisoning—Apply continuously to the part affected for twenty minutes or more. Repeat application hourly until pain and inflammation are relieved. * * * For * * * Bites of Poisonous Insects—Apply freely to the affected parts as soon as possible after injury. Caution: Do not rub with pressure. Do not bandage or cover the surface before it is dry. Do not allow any considerable thickness to remain on the skin but spread immediately."

ARTHUR M. HYDE, *Secretary of Agriculture.*

19652. Adulteration and misbranding of B. & M. U. S. v. 145 Small and 164 Large Bottles of B. & M. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 26982. I. S. Nos. 37913, 37914. S. No. 5196.)

This action involved the interstate shipment of a quantity of B. & M., in which the carton and accompanying circular bore statements identical with those borne by the carton and circular shipped with the product covered by N. J. No. 19651. The bottle labels were also the same as those quoted in the said notice of judgment as applicable to the small bottles of the product. Examination showed that the article contained no ingredients capable of producing the curative and therapeutic effects claimed in the labeling. Tests of its antiseptic properties showed that it would not destroy germs when used as directed.

On September 21, 1931, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 145 small bottles and 164 large bottles of B. & M., remaining in the original unbroken packages at Harrisburg, Pa., alleging that the article had been shipped in interstate commerce on or about September 10, 1931, by the F. E. Rollins Co., from Boston, Mass., to Harrisburg, Pa., and charging adulteration and misbranding in violation of the food and drugs act as amended.

Chemical analyses of samples of the article by this department showed that it consisted essentially of approximately 42 per cent of turpentine oil, approximately 5 per cent of ammonia, small proportions of ammonium salicylate, hexamethylenamine, thiosinamine, and a phenolic substance such as cresol, albuminous and phosphorus-containing material such as egg, and water. Bacteriological examination showed that it failed to kill a resistant strain of *Staphylococcus aureus* at body temperature within 30 minutes.

It was alleged in the libel that the article was adulterated in that it was sold under the following standard of strength: (Booklet cover) "For External Application, Inhalations Antiseptic;" (booklet, p. 1) "An Antiseptic * * * Application * * * For Antiseptic Applications," whereas the strength of said article fell below such professed standard in that the article did not possess antiseptic properties when used as directed in the labeling.

Misbranding was alleged for the reason that certain statements appearing in the printed booklet accompanying the article, and the designs appearing therein, were false and misleading. These false and misleading statements and designs were contained in an exhibit marked "Exhibit A" and made a part of and incorporated in the libel, and were identical with those quoted in notice of judgment No. 19651 as Exhibit A. Misbranding was alleged for the further reason that certain statements, designs, and devices appearing in the labeling of the product, regarding the curative or therapeutic effects of the article, were false and fraudulent, since it contained no ingredient or combination of ingredients capable of producing the effects claimed. These statements, designs, and devices were contained in an exhibit, marked "Exhibit B," and were attached to the libel and made a part of and incorporated therein, and were identical with false and fraudulent statements appearing on the carton, booklet, and small bottle labels in the product covered by notice of judgment No. 19651, and set out therein in Exhibit B.

On October 13, 1931, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

U. S. GOVERNMENT PRINTING OFFICE: 1933

N. J., F. D. 19653–19675 Issued February, 1933

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the food and drugs act]

19653–19675

[Approved by the Secretary of Agriculture, Washington, D. C., January 23, 1933

19653. Adulteration and misbranding of acetolate compound tablets, acetphenetidin and camphor compound tablets, and bismuth and salol compound tablets. U. S. v. West Manufacturing Co. Plea of guilty. Fine, $50. (F. & D. No. 26672. I. S. Nos. 28049, 28050, 28051.)

This action was based on the interstate shipment of certain drug preparations, samples of which were found to contain a smaller amount of one or more of the principal drugs than declared on the label. The labels of the acetolate compound tablets and the acetphenetidin and camphor compound tablets also bore unwarranted curative and therapeutic claims.

On November 4, 1931, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the West Manufacturing Co., a corporation, Camden, N. J., charging violation of the food and drugs act as amended The information charged that the defendant company had shipped on or about May 24 and December 22, 1930, from the State of New Jersey into the State of Pennsylvania, quantities of bismuth and salol compound tablets, and had shipped on or about February 23, 1931, also from New Jersey into Pennsylvania, quantities of acetolate compound tablets and acetphenetidin and camphor compound tablets, and that said products were adulterated and misbranded. The articles were labeled in part, variously: "Tablets Acetolate Comp. Acetphenetidin 1½ gr. * * * Indications: Grippe, Colds, Influenza, etc.;" "Tablets Acetphenetidin and Camphor Comp. Acetphenetidin 1½ gr. Acetylsalicylic Acid 1½ gr. * * * Indications—Cold and Grippe Conditions;" "Bismuth and Salol, Comp. Bismuth Subgallate ½ gr. Salol ½ gr. * * * West Manuf'g Co., Camden, N. J."

It was alleged in the information that the articles were adulterated in that their strength and purity fell below the professed standard and quality under which they were sold, as follows: Each of the acetolate compound tablets was represented to contain 1½ grains of acetphenetidin; whereas each of said tablets contained less of the said drug than so represented, namely, not more than 1.329 grains of acetphenetidin. Each of the acetphenetidin and camphor compound tablets was represented to contain 1½ grains of acetphenetidin and 1½ grains of acetylsalicylic acid; whereas each of the tablets contained less of the said drugs than so represented, namely, not more than 1.191 grains of acetphenetidin, and not more than 1.185 grains of acetylsalicylic acid. Each of the said bismuth and salol compound tablets was represented to contain one-half grain of bismuth subgallate and one-half grain of salol; whereas each of the tablets contained less of the said drugs than so represented, namely, not more than 0.441 grain of bismuth subgallate and not more than 0.356 grain of salol.

Misbranding of the articles was alleged for the reason that the statements, "Tablets * * * Acetphenetidin 1½ gr.," with respect to the acetolate compound tablets, the statement, "Tablets * * * Acetphenetidin 1½ gr., Acetylsalicylic Acid 1½ gr.," with respect to the acetphenetidin and camphor compound tablets, and the statement, "Bismuth Subgallate ½ gr., Salol ½ gr.," with respect to the bismuth and salol compound tablets, borne on the labels

of the respective articles, were false and misleading. Misbranding was alleged for the further reason that certain statements, designs, and devices, appearing on the labelings of the said acetolate compound tablets, falsely and fraudulently represented that the article was effective as a treatment, remedy, and cure for grippe and influenza; that certain statements, designs, and devices appearing on the labeling of the acetphenetidin and camphor compound tablets falsely and fraudulently represented that the article was effective as a treatment, remedy, and cure for grippe conditions; whereas the articles contained no ingredients or medicinal agents capable of producing the said curative and therapeutic effects.

On February 26, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $50.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19654. Adulteration of fluidextract of ginger. U. S. v. 150 Gallons of Fluidextract of Ginger. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 28959. S. No. 6775.)

On February 29, 1932, the United States attorney for the Eastern District of Tennessee, acting upon a report by an official of the Tennessee State Department of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 150 gallons of fluidextract of ginger, remaining in the original unbroken packages at Knoxville, Tenn., alleging that the article had been shipped in interstate commerce, in March, 1930, a portion by the Hub Products Co., Boston, Mass., and the remainder by the Interstate Drug Co., New York, N. Y., that the article had been transported from the States of Massachusetts and New York, respectively, into the State of Tennessee, and that it was adulterated in violation of the food and drugs act. The article was shipped in 3 barrels, 1 barrel invoiced "Liquid Medicine," and 1 labeled and invoiced "Fluid Extract." The remaining barrel of the product was unlabeled.

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of certain poisons which cause partial paralysis.

On April 22, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19655. Misbranding of Germania herb tea. U. S. v. 22 Dozen Packages of Germania Herb Tea. Default decree of condemnation and destruction. (F. & D. No. 27941. I. S. No. 50091. S. No. 5975.)

Examination of the drug product involved in this action showed that it was falsely labeled as to the name of the manufacturer and the State in which it was produced. The labeling of the article also bore unwarranted curative and therapeutic claims.

On March 23, 1932, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 22 dozen packages of the said Germania herb tea at Canton, Ohio, alleging that the article had been shipped in interstate commerce, on or about November 10, 1931, by the Royal Drug Co., from Chicago, Ill., to Canton, Ohio, and charging misbranding in violation of the food and drugs act as amended.

Analysis of a sample of the article by this department showed that it consisted essentially of senna leaves with smaller proportions of other plant drugs including corn flower, arnica, uva ursi, and a drug containing mydriatic alkaloids.

It was alleged in the libel that the article was misbranded in that it was falsely branded as to the State in which it was manufactured or produced, and in that the statement on the label, "Germania Tea Co.," was false and misleading, since the article was not manufactured or produced by that firm. Misbranding was alleged for the further reason that the following statements on the label, regarding the curative or therapeutic effects of the article, were false and fraudulent: "Germania Herb Tea will cause all the organs to eliminate; when proper elimination takes place, good circulation is established."

On June 27, 1932, no claimant having appeared for the property, judgment of condemnation was entered and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19656. Misbranding of Germania herb tea. U. S. v. 96 Packages of Germania Herb Tea. Default decree of condemnation and destruction. (F. & D. No. 27940. I. S. No. 50095. S. No. 5974.)

Examination of the drug product involved in this action showed that it was falsely labeled as to the name of the manufacturer and the State in which it was produced.

On March 23, 1932, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 96 packages of Germania herb tea at Akron, Ohio, alleging that the article had been shipped in interstate commerce on or about January 20, 1932, by the J. Walker Burns Co., from Chicago, Ill., and charging misbranding in violation of the food and drugs act.

Analysis of a sample of the article by this department showed that it consisted essentially of senna leaves with smaller proportions of other plant drugs including corn flower, arnica, uva ursi, and a drug containing mydriatic alkaloids.

It was alleged in the libel that the article was misbranded in that it was falsely branded as to the State in which it was manufactured or produced, and in that the statement on the label, "Germania Tea Co.," was false and misleading, since the article was not manufactured or produced by that firm.

On June 27, 1932, no claimant having appeared for the property, judgment of condemnation was entered and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19657. Adulteration and misbranding of antiseptic solution and San-I-Cide mouth wash. U. S. v. 24 Dozen Bottles of Antiseptic Solution, et al. Default decrees of destruction entered. (F. & D. Nos. 28235, 28236. I. S. Nos. 50060, 50061. S. No. 6085.)

These actions involved an interstate shipment of antiseptic solution, which was represented to meet the requirements of the National Formulary, and which was found to contain more alcohol and less boric acid than prescribed in the said formulary; and a shipment of San-I-Cide mouth wash, which was represented to be an antiseptic, and which examination showed was not antiseptic when used as directed. Examination also showed that the articles would not produce certain curative and therapeutic effects claimed in the respective labelings.

On April 27, 1932, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of 24 dozen bottles of antiseptic solution and 48 dozen bottles of San-I-Cide mouth wash at Columbus, Ohio, alleging that the articles had been shipped in interstate commerce, on or about March 4, 1932, by LaPompadour (Inc.), from Minneapolis, Minn., to Columbus, Ohio, and charging adulteration and misbranding in violation of the food and drugs act as amended.

Analyses of samples of the articles by this department showed that the antiseptic solution consisted essentially of boric acid (0.5 gram per 100 cubic centimeters), alcohol (by volume 39 per cent), volatile oils, and water; and that the San-I-Cide mouth wash consisted essentially of small proportions of formaldehyde and zinc chloride, glycerin, alcohol (by volume 8.3 per cent), and water flavored with cinnamon oil and colored with a red dye. Bacteriological examination showed that the article was not antiseptic.

Adulteration of the antiseptic solution was alleged in the libel for the reason that it was sold under a name recognized in the National Formulary, "antiseptic solution (liquor antisepticus)," and differed from the standard of strength, quality, or purity as determined by the test laid down in the said formulary, since analysis showed that it contained 38 per cent of alcohol and 0.5 gram of boric acid per 100 cubic centimeters, whereas the formulary prescribes that antiseptic solution should contain 28 per cent of alcohol and 2½ grams of boric acid per 100 cubic centimeters in addition to other ingredients. Adulteration of the antiseptic solution was alleged for the further reason that its strength fell below the professed standard or quality under which it was sold, namely, "Contains 28% Alcohol." Adulteration of the San-I-Cide mouth wash was alleged for the reason that it fell below the professed standard of strength under which it was sold, namely, "San-I-Cide Mouth Wash * * * An Effective * * * Antiseptic," since it was not an antiseptic when used as directed on the label for mouth wash, gargle, spray, or douche.

Misbranding of the antiseptic solution was alleged for the reason that the statements, "Antiseptic Solution (Liquor Antisepticus) * * * Contains 28% Alcohol Manufactured According to National Formulary Fifth Edition," were false and misleading, and for the further reason that the statements regarding its curative or therapeutic effects, "Sore Throat—Gargle either diluted with water or full strength," appearing on the label, were false and fraudulent, since the article contained no ingredient or combination of ingredients capable of producing the effects claimed. Misbranding of the said San-I-Cide mouth wash was alleged for the reason that the statements on the label, "San-I-Cide Mouth Wash * * * An Effective * * * Antiseptic * * * Contains * * * well known antiseptics * * * San-I-Cide is a pleasant, penetrating antiseptic mouth wash," were false and misleading when applied to an article which was not antiseptic when used as directed. Misbranding was alleged with respect to the said San-I-Cide mouth wash for the further reason that the following statements appearing on the label, regarding the curative or therapeutic effects of the article, were false and fraudulent, since the said article contained no ingredient or combination of ingredients capable of producing the effects claimed: "It makes the gums firm, healthy, and prevents receding. Aids in treating and preventing pyorrhea. Used as a spray or as a gargle, San-I-Cide gives relief in treating sore throat, tonsilitis. * * * is of great value in guarding against influenza, grippe, * * * and other infectious diseases. * * * The daily use of San-I-Cide will keep * * * the gums firm and healthy, * * * and by keeping the tissues of the mouth and throat in a firm and healthy condition will guard the entire system against contagion and disease. * * * A small quantity added to water when brushing the teeth will make the gums firm, * * * Will keep the tissue of the mouth and throat in a healthy condition. Bleeding Gums—Use as a mouth wash three times a day. Sore Throat and Tonsilitis—Dilute with an equal amount of hot water and use as a gargle or spray. * * * Sore Mouth—Use full strength as a wash."

On June 22, 1932, no claimant having appeared for the property, judgments were entered ordering that the products be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19658. Adulteration and misbranding of Ward's antiseptic tooth paste, and misbranding of Dr. Ward's Celebrated liniment, Ward's roup and white diarrhoea remedy, Ward's medicated poultry tonic, Ward's stock tonic, Ward's pills, Ward's kidney and bladder medicine, and Ward's pain reliever. U. S. v. Dr. Ward's Medical Co. Plea of nolo contendere. Fine $240. (F. & D. No. 27442. I. S. Nos. 625, 692, 11664, 11669, 24557, 24558, 24559, 24560, 24561, 24564, 24565, 24566, 24567, 24568, 24978, 24979, 24980, 24981, 24982, 25159.)

This action was based on interstate shipments of various drug preparations recommended for man and animals. Analyses showed that the articles contained no ingredients or combinations of ingredients capable of producing certain curative and therapeutic effects claimed in the labelings. The so-called antiseptic tooth paste was not antiseptic; the Ward's medicated poultry tonic contained sodium sulphate, which was not named on the label with the other declared ingredients.

On June 21, 1932, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Dr. Ward's Medical Co., a corporation, Winona, Minn., alleging shipment by said company in violation of the food and drugs act, as amended, of quantities of the said drug preparations which were misbranded, and of a quantity of Ward's antiseptic tooth paste which was adulterated and misbranded. The violations charged in the information embraced quantities of Dr. Ward's Celebrated liniment shipped between the dates of April 7 and October 9, 1930, from the State of Minnesota into the State of California; quantities of Ward's roup and white diarrhoea remedy, Ward's medicated poultry tonic, Ward's stock tonic, Ward's pills, and Ward's kidney and bladder medicine, shipped on or about March 14, 1931, from the State of Minnesota into the State of Michigan; and quantities of Ward's roup and white diarrhoea remedy, Ward's pills, Ward's antiseptic tooth paste, Ward's kidney and bladder medicine, and Ward's pain reliever, shipped between the dates of December 25, 1930, and March 31, 1931, from the State of Minnesota into the State of Iowa.

Analyses by this department of samples of the various preparations showed that Ward's liniment consisted essentially of volatile oils including sassafras oil and camphor, a pungent principle, soap, alcohol, and water colored with a red dye; that the roup and white diarrhoea remedy consisted essentially of potassium permanganate (20 per cent), copper sulphate (40 per cent), and boric acid (40 per cent); that the medicated poultry tonic consisted essentially of ground plant material including red pepper, ground clam shells, sulphur, charcoal, sodium sulphate, and a small proportion of iron sulphate; that the stock tonic consisted essentially of sodium chloride, sulphur, sodium sulphate, iron sulphate, a small proportion of sodium bicarbonate, charcoal, and ground plant material including fenugreek and red pepper; that Ward's pills consisted essentially of extracts of plant drugs such as uva ursi and buchu, juniper oil, methylene blue, and potassium nitrate; that the kidney and bladder medicine consisted essentially of sodium phosphate, sodium acetate, small proportions of sodium benzoate, uva ursi, and a laxative plant drug, and glycerin and water, flavored with vanillin and coumarin; that the pain reliever consisted essentially of small proportions of essential oils including sassafras oil and camphor, a pungent principle, soap, alcohol, and water; that the antiseptic tooth paste consisted essentially of calcium carbonate (29 per cent), talc (9 per cent), glycerin (20 per cent), and water, flavored with peppermint oil and sweetened with glycerin. Bacteriological examination of the tooth paste showed that the article failed to kill a resistant strain of *Staphylococcus aureus* in fifteen minutes at body temperature; the article was, therefore, not antiseptic.

It was alleged in the information that the said Ward's antiseptic tooth paste was adulterated in that its strength and purity fell below the professed standard and quality under which it was sold, and in that it was represented to be antiseptic, whereas it was not antiseptic.

Misbranding of the said tooth paste was alleged for the reason that the statement "antiseptic" borne on the tubes and cartons was false and misleading, since the article was not antiseptic. Misbranding was alleged with respect to the Ward's medicated poultry tonic for the reason that the statement, "This preparation contains the following ingredients: Gentian, Capsicum, Blood Flour, Clam Shells, Ginger, Sulphur, Shorts and Charcoal, carefully blended," was false and misleading, since the said statement represented that the article consisted wholly of the said named ingredients, whereas it consisted in part of sodium sulphate. Misbranding was alleged with respect to Ward's antiseptic tooth paste for the reason that certain statements, designs, and devices appearing on the tubes and cartons falsely and fraudulently represented that the article was effective to harden the gums and counteract the causes of decay, whereas it was not. Misbranding was alleged with respect to the Ward's medicated poultry tonic for the reason that certain statements, designs, and devices appearing on the carton label, falsely and fraudulently represented that the article was effective to produce strong, healthy poultry and to increase the production of eggs; and effective as a preventive and cure of diseases in chickens, ducks, turkeys, geese, and all other kinds of poultry; and effective to purify the blood, regulate the liver and digestive organs; and effective to make fowls strong and active and effective to make hens lay in cold weather, and effective to promote the growth of young chicks and to fatten chickens, whereas it would not be effective for the said purposes. Misbranding of Dr. Ward's Celebrated liniment was alleged for the reason that certain statements, designs, and devices appearing on the labels of the bottles and cartons and in an accompanying circular falsely and fraudulently represented that it would be effective as an antidote for alkali water; effective to relieve thirst; effective as a treatment for all troubles emanating from changing and drinking bad water; effective as a treatment for troubles caused by eating unripe fruit and for all poisons emanating from decay and putrefaction; effective as a treatment, remedy, and cure for cholera morbus, diarrhoea, dysentery, ordinary colic, chills and ague, ordinary sore throat, swellings, chillblains, muscular rheumatism, sweeny, and colic, and as a treatment, remedy, and cure for aches, cholera morbus, diarrhoea, chronic inflammation of the stomach, ordinary colic, ordinary coughs, cramps, ordinary sore throat, dysentery, earache, piles, and rheumatic pains; effective as a treatment, remedy, and cure for colic, coughs and colds, scour, swollen joints or muscles, and sweeny in horses; and effective as a treatment, remedy, and cure for scour and bloat in cattle, whereas it would not be

effective for the said purposes. Misbranding was alleged with respect to the Ward's roup and white diarrhoea remedy for the reason that certain statements, designs, and devices appearing on the box label falsely and fraudulently represented that it would be effective as a treatment, remedy, and cure for roup, white diarrhoea, and cholera, whereas it was not. Misbranding was alleged with respect to the Ward's stock tonic for the reason that certain statements, designs, and devices appearing on the carton label and leaflet falsely and fraudulently represented that it would be effective to strengthen and regulate the bowels, stomach, kidneys, and liver, aid digestion and assimilation, tone the system and prevent ordinary ailments in cattle, horses, hogs, and sheep; and effective to produce rapid growth, cleanse the system, and build up weak and overworked animals; effective as a treatment, remedy, and cure for epizootic, liver troubles, distemper, hide bound, roughness of hair, loss of appetite and impurity of blood in horses; effective to increase the quantity and quality of milk, tone the system and prevent disease in cows; effective to fatten cattle; effective to develop rapid growth in hogs; effective to strengthen suckling sows and to raise strong and healthy pigs; effective to prevent the ordinary ailments and to insure rapid growth in pigs; effective to fatten hogs and as a treatment, remedy, and cure for coughs; effective to keep stock in good healthy condition; effective to increase flesh and wool in sheep; and effective to prevent disease and insure rapid growth in pigs; whereas it would not be effective for the said purposes. Misbranding was alleged with respect to Ward's kidney and bladder medicine for the reason that certain statements, designs, and devices appearing on the bottle labels and in an accompanying circular falsely and fraudulently represented that it would be effective as a treatment, remedy, and cure for inflammation of the kidneys and bladder, backache, rheumatism due to kidney disorders and various urinary irregularities; and effective as a treatment, remedy, and cure for kidney, bladder, and urinary disorders; whereas it would not be effective for the said purposes. Misbranding of Dr. Ward's pills was alleged for the reason that certain statements, designs, and devices appearing in an accompanying circular falsely and fraudulently represented that it would be effective as a treatment, remedy, and cure for backache, kidney complaints, and diseases arising from disorders of the kidneys and bladder; effective as a quick relief for backache, bladder irritation, congestion of the kidneys, lame back, diabetes, gravel, lumbago, nonretention of urine, and other urinary troubles; and effective as a treatment, remedy, and cure for prostatic troubles; effective to restore a healthy condition to the kidneys and produce pure blood; and effective as a treatment, remedy, and cure for rheumatism, gouty conditions, lumbago, and pain in the back; whereas it would not be effective for the said purposes. Misbranding was alleged with respect to Ward's pain reliever for the reason that certain statements, designs, and devices appearing on the bottle labels falsely and fraudulently represented that it would be effective, when used externally or internally, as a pain reliever; effective as a treatment, remedy, and cure for la grippe, headache, sore throat, mumps, cholera morbus, diarrhoea, colic or cramping, catarrh, neuralgia, rheumatism, spinal affection, frosted limbs, and sprains; whereas it would not be effective for the said purposes.

On June 21, 1932, a plea of nolo contendere to the information was entered on behalf of the defendant company, and the court imposed a fine of $240.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19659. Misbranding of Kavatone and Kavatone soft mass pills. U. S. v. 66 Bottles of Kavatone, et al. Default decree of condemnation, forfeiture, and destruction. (F. & D. Nos. 28025, 28026. I S. Nos. 52317–A, 52317–B. S. No. 6064.)

This action involved the interstate shipment of a number of packages of a drug product known as Kavatone, each package containing a sample of Kavatone soft mass pills. Examination of the articles disclosed no ingredients or combinations of ingredients capable of producing certain curative and therapeutic effects claimed in the respective labelings. The Kavatone was represented to be a vegetable product, whereas it contained a mineral drug. It also was found to contain alcohol, which was not declared on the label as required by law.

On April 20, 1932, the United States attorney for the Western District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 66 bottles of the said Kavatone, and 66 packages of Kavatone soft mass pills, remaining in the original unbroken packages at

Grand Rapids, Mich., alleging that the articles had been shipped in interstate commerce on or about January 19, 1932, by Gray's Medicine Co., from South Bend, Ind., to Grand Rapids, Mich., and charging misbranding in violation of the food and drugs act as amended.

Analyses of samples of the articles by this department showed that Kavatone consisted essentially of potassium iodide (0.44 gram per 100 milliliters), extracts of plant drugs including a laxative drug, glycerin, isopropyl alcohol (by volume 3.7 per cent), and water, flavored with anise oil and methyl salicylate; and that Kavatone soft mass pills contained extracts of laxative plant drugs.

It was alleged in the libel that the Kavatone was misbranded in that the following statement appearing in the labeling was false and misleading, since the article contained potassium iodide, which is not a vegetable drug: "Prepared by the Combination of Herbs, Roots, Berries, Leaves and Blossoms gathered in various parts of the world and blended." Misbranding of the said Kavatone was alleged for the further reason that the packages and cartons failed to bear a statement on the labels of the quantity or proportion of alcohol contained in the article. Misbranding of the Kavatone was alleged for the further reason that the following statements regarding the curative or therapeutic effects of the article, appearing in the labeling, were false and fraudulent, since the article contained no ingredient or combination of ingredients capable of producing the effects claimed: (Bottle cap) "Kavatone Nature's Own Restorative;" (bottle label) "Kavatone;" (carton) "Kavatone the Builder of Strength for the Entire Family. Nature's Own Restorative * * * A splendid tonic and system purifier. * * * is rich in Energy Giving Herbs and strength building roots * * * Aids digestion and promotes general health recommended for Rheumatism, Stomach, Kidney, Liver and Impure Blood * * * Is a Tonic * * * Aids Digestion a Splendid System Purifier." Misbranding of the Kavatone soft mass pills was alleged for the reason that the following statements regarding its curative or therapeutic effects, appearing in the labeling, were false and fraudulent, since the article contained no ingredient or combination of ingredients capable of producing the effects claimed: (Envelope) "Kavatone;" (circular) "Kavatone Soft Mass Pills * * * Purify The Inner System * * * natural in their action * * * the most effective stimulant to the bile producing activity of the liver and also promote drainage of the gall bladder and bile passages. By stimulating and toning up the liver so that it will produce and deliver into the intestinal tract the correct quantity and quality of bile, * * * Kavatone Soft Mass Pills should be used with the Kavatone treatment for best results. They should be used with Kavatone until such time as regularity of bowel movement is established."

On July 19, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19660. Misbranding of Dr. Suckow's rheumatic remedy. U. S. v. 35 Bottles of Dr. Suckow's Rheumatic Remedy. Default decree of condemnation and destruction. (1939–A. F. & D. No. 28312.)

Examination of the drug product. Dr. Suckow's rheumatic remedy involved in this action, disclosed no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed for it on the bottle and carton labels and in a circular shipped with the article.

On May 18, 1932, the United States attorney for the District of Montana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 35 bottles of the said Dr. Suckow's rheumatic remedy, remaining in the original unbroken packages at Wolf Point, Mont., alleging that the article had been shipped in interstate commerce on or about March 28, 1932, by John K. Suckow, M. D., from Los Angeles, Calif., to Wolf Point, Mont., and charging misbranding in violation of the food and drugs act as amended.

Analysis of a sample of the article by this department showed that it consisted essentially of sodium salicylate (4.8 grams per 100 milliliters), potassium iodide (3.2 grams per 100 milliliters), colchicine, sugar, and water.

It was alleged in the libel that the article was misbranded in that the following statements appearing on the carton label were false and misleading: "Guaranteed by John K. Suckow, under Pure Food and Drugs Act, June 30, 1906." Misbranding was alleged for the further reason that the following statements regarding its curative and therapeutic effects, appearing in the labeling,

were false and fraudulent, since the said article contained no ingredient or combination of ingredients capable of producing the effects claimed: (Bottle label) "Rheumatic Remedy A Sure Relief for Rheumatism and Gout;" (carton) "Rheumatic Remedy A Positive Remedy For Rheumatism and Gout;" (pink circular) "Rheumatic And Gout Remedy;" (white circular) "Rheumatic And Gout Remedy * * * in the treatment of Rheumatism, Gout, * * * Sciatica, Lumbago, Kidney and Bladder troubles, and the different complications of these diseases. * * * Rheumatism in all its different forms need no longer be dreaded, as it can be eradicated as soon as the first symptoms commence. This remedy will soon remove inflammation and irritation, and, in this way, take away the pains accompanying Rheumatism and its different complications. It can be taken by all constitutions, but people with a weak or sensitive stomach and subject to vomiting should take the remedy in small doses. Kidney And Bladder Troubles Promptly Cured * * * Rheumatic Remedy, is a prompt, complete and positive remedy for lameness, soreness, stiff back and pains in hips, loins and between the shoulders, swollen feet and legs, sleeplessness, tired feeling, scalding pains in passing water, dark and cloudy urine, inability to hold water, fluttering of the heart, Diabetes or Glucosaria, Bright's Disease and lead poisoning. * * * Rheumatic Remedy * * * thousands of grateful men acknowledge that it cured them, when all else had failed. Money refunded if not cured; * * * Directions For Use When the disease is acute and accompanied by pains, one small teaspoonful should be taken three times a day, one hour before meals or one hour after meals, in a wineglassful of water or milk, and one-half teaspoonful before retiring. Continue until bowels move freely, then reduce the dose to one-half, or if necessary, to one-half teaspoonful in the morning and one-half teaspoonful in the evening; later on increase or decrease the dose again according to the requirements of the constitution. * * * Acute Rheumatism Can Be Relieved After a Few Doses. When the disease is chronic or of long standing, one-half teaspoonful or less should be taken twice a day, in the morning and before retiring. * * * In Chronic Rheumatism give the medicine a fair trial. One bottle will improve you, but you have to continue for a time to be completely cured. * * * Rheumatic Remedy * * * Pure Blood It is of the greatest importance to keep the blood pure. Most of the diseases in the human system are caused by the unhealthy condition of the blood. Pure blood means health, just as impure blood means disease. Science has demonstrated that Rheumatism, Gout and its different complications, are caused by the excess of uric acid in the blood, and the Rheumatic germs. The quickest relief is given by the elimination of these poisonous agents. Suckow's Rheumatic Remedy will remove all poisonous matter from the system. It is a blood purifier, and leaves the blood in a good healthy condition. It does not alone cure Rheumatism, Gout, Neuralgia, Lumbago, Sciatica and its different complications, but all diseases due to bad blood. It is an exceptionally good remedy for miners, or people working in smelters, suffering from mineral poisoning (Lead, Sulphur, Arsenic, Zinc, Mercury). This medicine coming in contact with the mineral will form a soluble salt with it, and carry it off through the bowels. Medical statistics have proven that 42% of all cases of heart disease are due to acute or chronic Rheumatism. Dr. Suckow's Rheumatic Remedy, by its peculiar action upon the blood and valves of the heart prevents the heart from getting affected and so avoids the disastrous consequences of heart disease. [Testimonials] 'I had Rheumatism so bad that I could walk only on crutches. My pains were severe and doctors could not relieve me. I took Suckow's Rheumatic Remedy and in two days I could walk with a cane. I continued using it for a few days, taking two other bottles, which entirely cured me, and I am now free from pain and in good health.' * * * 'I have been a sufferer from Rheumatism for six months, in the hospital; treated by doctors but received no benefit. A friend of mine told me of Suckow's Rheumatic Cure. I took two bottles and the result was wonderful.' * * * 'I had Rheumatism for many years; tried patent medicines, had doctors to treat me, but nothing gave me relief or cured me. I tried Suckow's Rheumatic Remedy, which helped and cured me. Everybody in town knows me and is surprised to see me working again, as I was laid up for many months. I recommend it to all my friends who suffer from this disease.' * * * 'I have found your Rheumatic Cure the most efficient Remedy I ever tried. I think it is the best remedy for chronic rheumatic gout. There are many of my friends that have taken it with the same beneficial results.'" (Similar statements were made in German.)

On June 28, 1932, no claimant having appeared for the property, judgment of condemnation was entered and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19661. Adulteration and misbranding of magnesium sulphate compound capsules, silver nitrate compound capsules, decaphen capsules, benzoic acid compound tablets, ammonium salicylate compound tablets, and cinchophen tablets. U. S. v. S. F. Durst & Co. Pleas of guilty. Fines, $300. (F. & D. Nos. 27479, 27519. I. S. Nos. 28783, 29804, 29805, 29806, 30928, 30952.)

This action was based on the interstate shipment of quantities of drug preparations consisting of tablets or capsules containing one or more drugs. The labels of all products bore a declaration of the various drugs and the amount of each drug alleged to be present in the tablet or capsule. Analyses showed a material shortage or excess of one or more of the principal drugs in all of the products. The labels of the magnesium sulphate compound tablets and the silver nitrate compound tablets also bore unwarranted therapeutic claims. The ammonium salicylate compound tablets contained acetphenetidin and failed to state on the label that the acetphenetidin is a derivative of acetanilid.

On March 28, 1932, the United States attorney for the Eastern District of Pennsylvania, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid two informations against S. F. Durst & Co., a corporation, Philadelphia, Pa., charging violation of the food and drugs act as amended. The information alleged that on or about October 10, October 13, and October 21, and December 5, 1930, the said defendant shipped from Pennsylvania into New Jersey quantities of magnesium sulphate compound capsules, silver nitrate compound capsules, and decaphen capsules; that on or about April 25, 1931, and April 27, 1931, the said defendant had shipped from Pennsylvania into New Jersey quantities of acid benzoic compound tablets and cinchophen tablets respectively; and that on or about April 9, 1931, the defendant had shipped from Pennsylvania into Maryland a quantity of ammonium salicylate compound tablets; and that the said drugs were adulterated and misbranded in violation of the food and drugs act as amended. The articles were labeled in part, respectively: "Durst * * * Capsules Magnesium Sulphate Comp. * * * Calomel ¼ gr;" "Durst * * * Capsules Silver Nitrate Comp. Silver Nitrate ¼ gr;" "Durst * * * Capsules Decaphen Cincophen 1 gr. * * * Amidopyrine 1 gr;" "Durst * * * Acid Benzoic Comp. Benzoic Acid 2 gr.;" "Durst * * * Ammonium Salicylate Comp. No. 2 Acetphenetidin * * * Ammonium Salicylate ½ gr.;" "Durst * * * Cincophen 7½ grs. * * * Durst & Company Manufacturing Pharmacists Philadelphia Pennsylvania."

Adulteration of the articles was alleged in the informations for the reason that their strength and purity fell below the professed standard and quality under which they were sold, as follows: Each of the magnesium sulphate compound capsules was represented to contain one-fourth grain of calomel, whereas each of said capsules contained not more than 0.213 grain of calomel. Each of the silver nitrate compound capsules was represented to contain one-fourth grain of silver nitrate, whereas each of said capsules contained more than so represented, to wit, not less than 0.405 grain of silver nitrate; each of the decaphen capsules was represented to contain 1 grain of cinchophen and 1 grain of amidopyrine, whereas each of said capsules contained less of the said drugs than so represented, to wit, not more than 0.65 grain of cinchophen and not more than 0.78 grain of amidopyrine; each of the acid benzoic compound tablets was represented to contain 2 grains of benzoic acid, whereas each of said tablets contained more than so represented, to wit, not less than 2.585 grain of benzoic acid; each of the ammonium salicylate compound tablets was represented to contain ½ grain of ammonium salicylate, whereas each of said tablets contained more than so represented, to wit, not less than 0.57 grain of ammonium salicylate, i. e., 11 per cent more than labeled; and each of the cinchophen tablets was represented to contain 7½ grains of cinchophen, whereas each of said tablets contained less than so represented, to wit, not more than 6.331 grains, i. e., five-sixths of the amount of cinchophen stated on the label.

Misbranding was alleged for the reason that the statement "Calomel ¼ gr.," borne on the label of the bottle containing the magnesium sulphate compound capsules, "Silver Nitrate ¼ gr.," borne on the label of the bottle containing the silver nitrate compound capsules, "Cincophen 1 gr. * * * Amidopyrine

1 gr.," borne on the label of the bottle containing the decaphen capsules, "Benzoic Acid 2 grs.," borne on the label of the bottle containing the acid benzoic compound tablets, "Ammonium Salicylate ½ gr.," borne on the label of the bottle containing the ammonium salicylate compound tablets, and "Cincophen 7½ grs.," borne on the label of the bottle containing the cinchophen tablets, were false and misleading, and for the further reason that the articles were labeled as aforesaid so as to deceive and mislead the purchaser, since the articles did not contain the said drugs in the amounts declared on the label. Misbranding was alleged with respect to the magnesium sulphate compound capsules for the further reason that a certain statement appearing on the bottle label falsely and fraudulently represented that it was effective as a treatment for high blood pressure, whereas it was not; and with respect to the silver nitrate compound capsules for the reason that a certain statement appearing on the bottle label falsely and fraudulently represented that it was effective as a treatment for gastritis, whereas it was not, the products containing no ingredients or medicinal agents effective to produce the said curative and therapeutic effects. Misbranding was alleged with respect to the ammonium salicylate compound tablets for the reason that the article contained acetphenetidin, a derivative of acetanilid, and the fact that acetphenetidin is a derivative of acetanilid was not stated on the label.

On June 13, 1932, a plea of guilty to each information was entered on behalf of the defendant company, and the court imposed a fine of $150 in each case, a total of $300.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19662. Misbranding of Germaline tablets. U. S. v. 129 Packages of Germaline Tablets. Default decree of condemnation and forfeiture. (F. & D. No. 28290. I. S. No. 47523. S. No. 6163.)

Examination of the drug product, Germaline tablets involved in this action, disclosed no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed for it on the carton label.

On May 10, 1932, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 129 packages of the said Germaline tablets, remaining in the original unbroken packages at Omaha, Nebr., alleging that the article had been shipped in interstate commerce, on or about January 28, 1932, by the Shores-Mueller Co., from Cedar Rapids, Iowa, to Omaha, Nebr., and charging misbranding in violation of the food and drugs act as amended.

Analysis of a sample of the article by this department showed that it consisted essentially of sodium sulphate, potassium permanganate, and sodium chloride.

It was alleged in the libel that the article was misbranded in that the following statements regarding its curative and therapeutic effects, appearing on the carton, were false and fraudulent, since the said article contained no ingredient or combination of ingredients capable of producing the effects claimed: "Germaline * * * For the Treatment of Poultry Ailments Such As Cholera, Roup, Canker, Bowel Complaint, Swelled Head * * * Sore Mouth, * * * Useful in the Treatment of Affections of the Mucus Membrane. Bowel Complaint; Use Germaline in the drinking water, a tablet to a quart of water. * * * Roup is caused by a severe cold in the head and is accompanied with an accumulation of mucus in the nostrils. * * * Sore Throat: Use Germaline in the drinking water and in severe cases swab the throat with a feather wet in the remedy. Cholera: Is an internal disease accompanied with bowel trouble. Treat as for bowel complaint. Scaly Legs, Pox, * * * Treat with one or two tablets to one-half pint of water. A Valuable Remedy for rusty nail wounds, * * * sore mouths."

On June 23, 1932, no claimant having appeared for the property, judgment of condemnation was entered and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19663. Adulteration and misbranding of ether. U. S. v. Sixteen 5-Pound Cans of Ether. Default decree of condemnation, forfeiture, and destruction. (F. & D No. 27946. I. S. Nos. 23079, 23082. S. No. 5997.)

Samples of ether taken from the shipment involved in this action having been found to contain peroxide, a decomposition product, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Washington.

On March 24, 1932, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of sixteen 5-pound cans of ether, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped in interstate commerce, on or about November 28, 1931, by H. S. Benedict Co. (Inc.), from New York, N. Y., to Seattle, Wash., and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: "Ether U. S. P."

It was alleged in the libel that the article was adulterated in that it was sold under a name recognized in the United States Pharmacopoeia, and differed from the standard of strength, quality, and purity as determined by tests laid down in the said pharmacopoeia, and its own standard was not stated on the label.

Misbranding was alleged for the reason that the statement on the label, "Ether U. S. P.," was false and misleading.

On June 30, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19664. Misbranding of Lekotoria. U. S. v. 23 Bottles of Lekotoria. Default decree of condemnation, forfeiture, and destruction. (8629-A. F. & D. No. 28299.)

Examination of the drug product Lekotoria involved in this action showed that the article contained no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed for it on the bottle labels.

On May 10, 1932, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel, and on May 24, 1932 an amended libel, praying seizure and condemnation of 23 bottles of Lekotoria, remaining in the original unbroken packages at Lackawanna, N. Y. It was alleged in the libel as amended that the article had been shipped in interstate commerce, on or about March 15, 1932, by the Karnack-Ambrosia Co., from Scranton, Pa., to Lackawanna, N. Y., and that it was misbranded in violation of the food and drugs act as amended.

Analysis of a sample of the article by this department showed that it consisted essentially of extracts of plant drugs including aloe, sugar, alcohol, and water.

Misbranding of the article was alleged in the libel as amended for the reason that the following statements appearing in the labeling, were false and fraudulent: (Bottle label, large) "Healing * * * Invaluable aid in treating the following ailments: Stomach trouble, catarrh of the stomach, kidney and liver trouble, piles, weak nerves, * * * rheumatic and gouty pains, lungs, inflammation and other ailments caused by improper digestion, * * * and weak and impure blood;" (bottle label, small) "Healing."

On June 17, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19665. Misbranding of Septigyn. U. S. v. Herbert A. Stolte and Robert W. Nichols (The N & S Co.). Pleas of guilty. Fines, $200. (F. & D. No. 27437. I. S. No. 14245.)

This action was based on the interstate shipment of a quantity of a drug product known as Septigyn. Examination of the article disclosed no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed for it on the carton label and in a booklet shipped with the article.

On January 13, 1932, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Herbert A. Stolte and Robert W. Nichols, copartners, trading as the N & S Co., Dallas, Tex., alleging shipment by said defendants in violation of the food and drugs act as amended, on or about November 29, 1930, from the State of Texas into the State of Kansas, of a quantity of Septigyn that was misbranded.

Analysis of a sample of the article by this department showed that it consisted essentially of zinc phenolsulphonate, sodium phenolsulphonate, copper phenolsulphonate, sodium sulphate, talc, and milk sugar.

It was alleged in the information that the article was misbranded in that certain statements, designs, and devices, appearing on the carton and in the booklet inclosed in the carton, falsely and fraudulently represented that it was effective as a safe cleanser for diseases peculiar to women; effective as a safe, sure, and speedy remedy for diseases peculiar to women; effective as a safe and certain preventive of disease; effective as the quickest and best known remedy for gonorrhea in both male and female; effective to prevent the contraction of gonorrhea; effective as a treatment, remedy, and cure for all diseases of the generative tract, such as leucorrhea, falling of the womb, adhesions, cervical lacerations, ovarian affections, and menstrual derangements; effective as a preventive of specific and infectious venereal diseases, chancroidal ulcers and syphilis; effective to relieve disease and disorders peculiar to women; effective to relieve general weakness, dispel gloom, depression, and despondency; effective to build up the weak and exhausted system, to change lassitude and weakness to vigor, improve the digestion and appetite, strengthen and harden the muscles, tone the system, and purify the blood; effective to arrest involuntary loss of vitality, to bring sound and restful sleep, to strengthen the muscular and nerve centers, to supply power and create blood, to tone the relaxed and weakened parts; effective as a treatment, remedy, and cure for suppressed menstruation, flooding, and painful menstruation and leucorrhea; effective to purify the blood and restore vivacity; effective to absorb the scar tissue resulting from laceration of the cervix; effective as a treatment, remedy, and cure for chronic inflammation and ulceration, pruritis, ovarian disorders and displacements, retroversion and prolapsus of the womb; and effective to relieve the suffering, shorten the period, and mitigate the danger of change of life, whereas the said article contained no ingredients or medicinal agents effective for the said purposes.

On March 8, 1932, the defendants entered pleas of guilty to the information, and the court imposed fines in the amount of $200.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19666. Adulteration of morphine sulphate tablets. U. S. v. Meyer Bros. Drug Co. Plea of nolo contendere. Fine, $50 and costs. (F. & D. No. 27453. I. S. No. 24282.)

This action was based on an interstate shipment of a drug represented to be one-fourth grain morphine sulphate tablets, samples of which were found to contain less than one-fourth grain of morphine sulphate.

On January 12, 1932, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Meyer Bros. Drug Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the food and drugs act, on or about October 27, 1930, from the State of Missouri into the State of Louisiana, of a quantity of morphine sulphate tablets that were adulterated. The article was labeled in part: (Bottles) "100 Hypodermic Tablets, Morphine Sulphate, ¼ Grain, Meyer Brothers Drug Co., Manufacturing Chemists, Saint Louis."

It was alleged in the information that the article was adulterated in that its strength and purity fell below the professed standard and quality under which it was sold, since each of said tablets was represented to contain one-fourth of a grain of morphine sulphate, whereas each of said tablets contained less than so represented, to wit, not more than 0.2199 of a grain of morphine sulphate.

On April 25, 1932, a plea of nolo contendere to the information was entered on behalf of the defendant company, and the court imposed a fine of $50 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19667. Misbranding of Z-G-Herbs. U. S. v. 23 Packages of No. 5 Z-G-Herbs, et al. Default decree of condemnation, forfeiture, and destruction. (F. & D. Nos. 27704 to 27708, incl. I. S. Nos. 50008 to 50012, incl. S. No. 5782.)

This action involved the interstate shipment of drug products known as Z-G-Herbs, which consisted of five different products distinguished by the numbers 5, 12, 24, 31, and 51, respectively. Examination of the articles disclosed no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed in the labeling.

On February 8, 1932, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the

District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 23 packages of No. 5 Z-G-Herbs, 32 packages of No. 12 Z-G-Herbs, 11 packages of No. 24 Z-G-Herbs, 10 packages of No. 31 Z-G-Herbs, and 10 packages of No. 51 Z-G-Herbs at Detroit, Mich., alleging that the articles had been shipped in interstate commerce on or about December 15, 1931, by the Z-G-Herbs Co., from Chicago, Ill., to Detroit, Mich., and charging misbranding in violation of the food and drugs act as amended.

Analyses of samples of the articles by this department showed that the Z-G-Herbs No. 5 consisted largely of senna leaves and pods with relatively small proportions of althea root, horehound, American camomile, and American saffron; that the Z-G-Herbs No. 12 consisted largely of horehound with relatively small proportions of althea root, fennel seed, Irish moss, licorice root, and peppermint herb; that the Z-G-Herbs No. 24 consisted of a mixture of bittersweet herb, mistletoe, peony root, camomile flowers, and wormwood; that the Z-G-Herbs No. 31 consisted largely of matico leaves with smaller proportions of other plant material including arbor vitae, mallow leaves, uva ursi leaves, and equisetum; and that the Z-G-Herbs No. 51 consisted of a mixture of peppermint herb (about 5 parts) and rosemary leaves (about 1 part).

It was alleged in the libel that the articles were misbranded in that the following statements regarding the curative or therapeutic effects of the articles were false and fraudulent, since they contained no ingredients or combinations of ingredients capable of producing the effects claimed: (Circular accompanying Z-G-Herbs No. 5) "5. General Cold, Influenza Grip;" (circular accompanying Z-G-Herbs No. 12) "12. Cough Whooping Cough all diseases of the lungs;" (circular accompanying Z-G-Herbs No. 24) "24. Epilepsy, St. Vitus dance, nervous fright;" (circular accompanying Z-G-Herbs No. 31) "31. Tea for Gonorrhoea;" (circular accompanying Z-G-Herbs No. 51) "51. All diseases of the heart;" (circular headed "Purify Your System," accompanying all articles) "Purify Your System Renew Your Health * * * in order to be healthy you must keep your system Pure, * * * what is wealth without Health—Keep Your System Pure! You will enjoy freedom from pain and long years of life. How * * * your liver, * * * has the function of purifying your blood and by this process keeping your body pure and healthy. * * * Do not expect to be well when you are using pills or powders. * * * There is only one logical answer to your question of health.—Z. G. Herbs When you take Z. G. Herbs you feel the results at once, it cleans you out thoroughly—every inch of your twenty-five foot canal, including your stomach, small and the large intestine or colon is thoroughly cleared and washed clean and the accumulated poisons and catarrhal secretions are expelled out. * * * Eat what you please and go about your work, there is no danger, for Z. G. Herbs tea is perfectly safe as it creates no habit except the habit of healthy bowel action. * * * The Laws of Nature * * * and so against health we have sickness an against sickness we have Z. G. Herbs teas. Do not get discouraged when you are in pain, cause for every minute of pain—* * * as the pain which you have suffered. * * * when we feel pain we complain—how unjust the nature is. * * * you realize pleasure * * * know what pain is;" (circular headed "To Buyers of Herbs," accompanying all articles) "Every day we hear this question: Is Juniper good for kidneys and bladder? Is Chamomile good for Children? Is Irish Moss good for colds and coughs? and is this good for that and so forth. It is impossible for us to give a definite and affirmative answer in every case because while these ingredients have curative properties in one sickness or other, They cannot be helpful to every individual in every case. Were it so, the science of medicine would indeed be very simple. One could take a handfull of each of a dozen ingredients and make a universal remedy which supposedly would cure every ailment under the sun from headache to ingrown toe-nails. It of course, would be a folly to attempt compounding such remedy. Twenty years of our experience have thought us that there is not a single herb or medicinal ingredient which would help in every form of certain ailment or in every human being. There are many forms of kidney trouble—there are many forms of stomach disturbances and there are many forms of every disease and the same one root or herb cannot help in all these forms. This was the very reason why over 20 years ago we have commenced to manufacture Z. G. Herbs Teas. Exhaustive study and research led us to manufacture Herb Compounds which would be equally efficient in every case of a certain ailment. And so for instance in our kidney tea, we are using 23 different roots, barks, seeds, flowers and leaves, most of them imported from different parts of the world, all ingredients being cut or ground finely in order

to get proper distribution of each ingredient so, that when you take a spoonfull of this mixture it will contain portion of each of the 23 ingredients. Each one of these ingredients has especial influence upon the Kidneys and Bladder, and such a combination Must be helpfull.—We apply the same principle to every one of our teas." Similar statements were made on the labeling in a foreign language.

On March 4, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the products be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19668. Adulteration and misbranding of Lar-Io-Ben. U. S. v. 66 Packages of Lar-Io-Ben. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 28243. I. S. No. 43942. S. No. 6110.)

Examination of the drug product, Lar-Io-Ben involved in this action, showed that the article contained no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed for it on the bottle label and carton. The article was also represented to be antiseptic, whereas it was not antiseptic when used as directed.

On April 25, 1932, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 66 packages of the said Lar-Io-Ben, remaining in the original unbroken packages at Newark, N. J., alleging that the article had been shipped in interstate commerce in various consignments, on or about January 16, February 17, and March 26, 1932, by the Marvell Pharmacal Co. (Inc.), from New York, N. Y., to Newark, N. J., and charging adulteration and misbranding in violation of the food and drugs act as amended.

Analysis of a sample of the article by this department showed that it consisted essentially of small proportions of sodium chloride, iodides, benzyl alcohol, and gallic acid, and glycerin and water, flavored with vanillin. Bacteriological examination showed that the article was not antiseptic when diluted with five or more parts of water.

It was alleged in the libel that the article was adulterated in that its strength fell below the professed standard or quality under which it was sold, namely: "Antiseptic * * * Dilute one part of Lar-Io-Ben with five or more parts of water, as instructed by your physician, for nasal douche, spray, gargle, or mouth wash." Misbranding was alleged for the reason that the following statements appearing on the carton and bottle label were false and misleading: (Carton) "Antiseptic * * * Antiseptic for Nose, Throat and Mouth;" (bottle) "Lar-Io-Ben * * * is a concentrated, antiseptic, * * * solution. * * * Directions:—Dilute one part of Lar-Io-Ben with five or more parts of water." Misbranding was alleged for the further reason that the following statements regarding the curative and therapeutic effects of the article, appearing on the carton and bottle label, were false and fraudulent, since the said article contained no ingredient or combination of ingredients capable of producing the effects claimed: (Carton) "A Prophylactic and Antiseptic Frequently Indicated for the Treatment of Diseases of the Nose, Throat and Mouth. * * * Antiseptic For Nose, Throat and Mouth A Prophylactic Against Infection;" (bottle) "It is a prophylactic against nasal, laryngeal and oral bacterial invasion, and is frequently indicated in acute and chronic tonsillitis, pharyngitis, laryngitis and rhinitis."

On June 13, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19669. Misbranding of Von's pink tablets. U. S. v. 16 Bottles of Von's Pink Tablets. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27926. I. S. No. 32621. S. No. 5968.)

Examination of a drug product, known as Von's pink tablets, taken from the interstate shipment involved in this action showed that the article contained no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed for it on the bottle label and in a circular shipped with the article.

On March 31, 1932, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court

of the United States for the district aforesaid a libel praying seizure and condemnation of 16 bottles of the said Von's pink tablets, remaining in the original unbroken packages at Denver, Colo., consigned by the Omaha Von Co., Omaha, Nebr., alleging that the article had been shipped in interstate commerce on or about March 19, 1932, from Omaha, Nebr., to Denver, Colo., and charging misbranding in violation of the food and drugs act as amended.

Analysis of a sample of the article by this department showed that it consisted essentially of bismuth subnitrate, magnesium carbonate, calcium carbonate, starch, and talcum.

It was alleged in the libel that the article was misbranded in that the following statements regarding its curative and therapeutic effects, appearing in the labeling, were false and fraudulent, since the said article contained no ingredient or combination of ingredients capable of producing the effects claimed: (Bottle label) "To be used for stomach and intestinal disorders, and other systemic conditions, induced by hyper-acidity. Directions For the first week take one tablet after meals, three times a day, and drink a glass of milk between meals and a cup of hot milk at bedtime. The milk is beneficial but not absolutely necessary. After the first week then take two tablets, after meals, three times a day, and continue to drink the milk as before. Tablets may be chewed, broken up or partly dissolved in a tablespoonful of water, drinking water afterwards. Drink all the water you like anytime;" (pink circular) "Directions and instructions It Is Extremely Important that you follow all the directions and instructions faithfully for quick results. The treatment is the same for either Acidosis or Ulcers. Directions: The first week take one tablet after meals, three times a day. Drink a glass of milk, or fruit juice, two hours after each meal. If troubled with sleeplessness, warm the milk you drink in the evening. After the first three days, begin increasing the food you take at meal times. After the first week, take two tablets instead of one and continue the other directions as before. No lunches between meals, except the milk or fruit juice. Tablets should not be swallowed whole but should first be broken up, or partly dissolved in a tablespoon of water. Drink a full glass of water afterwards. Drink at least a quart of water each day. If you experience some nausea the first few days do not stop the treatment as it will soon pass. If constipated do not use harsh physics. Use pure mineral oil, secured at any drug store. Quit the mineral oil as soon as possible. Form the habit of a regular time each day for bowel attention. If your bowels are too loose at the start, boil one or more of the glasses of milk you drink. As you eat more food bowel looseness will quit. The stool will be quite dark or even black. Instructions: Do not eat the following acid producing foods: wheat, oats or rice products—white or whole-wheat bread—oatmeal—rice—pork or veal—eggs—fish—oysters—prunes or cranberries. You can, and should, eat the following foods: rye or corn breads, muffins or breakfast foods—beef, mutton and lamb—beef liver—all vegetables without exception and especially baked potato—any of the milk products, such as milk, cream, buttermilk, malted milk, cheese, ice cream—and you should especially make some fruit or fruit juice (except prunes or cranberries) a part of your breakfast each day. You can eat any desserts that are not made largely of eggs. Avoid alcohol in any form. Avoid tea entirely. Drink but one cup of coffee a day. If you now use tobacco do not stop. Information: There are no ingredients in these tablets to harm the most sensitive stomach, nor harm any other organ of the body. They contain no narcotics nor any other habit forming drugs. They do not lose their effect, as some medicines do, but can be taken over a long period of time with good results. The time it takes you to get well will depend on your condition, and how faithfully you follow the treatment. Ulcers should heal completely in sixty days of uninterrupted treatment. Acidosis sometimes responds sooner and sometimes takes longer for complete results. A cold adds acid to the stomach. Worry and fear are bad for the stomach. Take reasonable outdoor exercise. As soon as you can, without distress, eat more substantial meals, at regular meal times, to build up your general strength and to give your stomach and bowels the exercise they need. We are interested in your getting well and will be glad to answer any questions concerning the treatment but we cannot diagnose cases nor act as consultants."

On May 7, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19670. Misbranding of Hoyt's Vapor-Ply, Hoyt's catarrhal jelly, and Hoyt's cold tablets. U. S. v. Hoyt Bros. (Inc.). Plea of guilty. Fine, $75. (F. & D. No. 27455. I. S. Nos. 29915, 29916, 29917.)

This action was based on the interstate shipment of quantities of drug preparations, consisting of one lot each of Hoyt's Vapor-Ply, Hoyt's catarrhal jelly, and Hoyt's cold tablets. Examination of these products disclosed no ingredients or combinations of ingredients capable of producing certain curative and therapeutic effects claimed for them in the labelings.

On January 19, 1932, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Hoyt Bros. (Inc.), a corporation, Newark, N. J., alleging shipment by said company, in violation of the food and drugs act as amended, on or about November 24, 1930, from the State of New Jersey into the State of Pennsylvania, of quantities of the said Hoyt's Vapor-Ply, Hoyt's catarrhal jelly, and Hoyt's cold tablets, which were misbranded.

Analyses of samples of the articles by this department showed that Hoyt's Vapor-Ply consisted essentially of petrolatum containing volatile oils including camphor, menthol, eucalyptol, thymol, and methyl salicylate; Hoyt's catarrhal jelly consisted essentially of petrolatum containing volatile oils including menthol, camphor, and eucalyptol; Hoyt's cold tablets consisted essentially of acetanilid (1.95 grains per tablet), quinine sulphate, podophyllum resin, aloin, capsicum, camphor, and extracts of plant drugs including gelsemium.

The Vapor-Ply was labeled in part: (Jar) "Hoyt's Quality Products, Vapor-Ply * * * Directions Acute Bronchitis, Influenza, Congestion of the Lungs. * * * Sore Throat, * * * Whooping Cough," (carton) "Hoyt's Vapor-Ply Gives Relief in Asthma, Catarrh, * * * Croup, Sore Throat, Whooping Cough, Influenza, Muscular Rheumatism, * * * Chilblains." The catarrhal jelly was labeled in part: (Tube) "Hoyt's * * * Catarrhal Jelly For Nasal Catarrh;" (carton) "Hoyt's Catarrhal Jelly * * * will * * * prevent the contraction of * * * Influenza, La Grippe, Sore Throat, etc." The cold tablets were labeled in part: (Box) "Hoyt's Cold Tablets For * * * Coughs, Influenza, etc. * * * Hoyt Bros., Inc. * * * Newark, New Jersey."

Misbranding of the said Hoyt's Vapor-Ply was alleged in the information for the reason that certain statements, designs, and devices regarding the curative and therapeutic effects of the article, appearing on the labels of the jars and cartons, falsely and fraudulently represented that it was effective as a relief for asthma, catarrh, croup, sore throat, whooping cough, influenza, muscular rheumatism, and chilblains, and effective as a treatment, remedy, and cure for acute bronchitis, influenza, congestion of the lungs, sore throat, and whooping cough, whereas it contained no ingredients or medicinal agents effective for the said purposes. Misbranding of the said Hoyt's catarrhal jelly was alleged for the reason that certain statements, designs, and devices, regarding the curative and therapeutic effects of the article, appearing on the labels of the tubes and cartons, falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for nasal catarrh, and effective as a preventive of influenza, la grippe, sore throat, coughs, and kindred affections, whereas it contained no ingredients or medicinal agents effective for the said purposes. Misbranding of Hoyt's cold tablets was alleged for the reason that certain statements, designs, and devices regarding the curative and therapeutic effects of the article, appearing on the box label, falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for coughs and influenza, whereas it contained no ingredients or medicinal agents effective as a treatment, remedy, and cure for coughs or influenza.

On April 22, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $75.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19671. Adulteration and misbranding of alleged cramp bark. U. S. v. Edgar A. Dobbin (E. A. Dobbin and E. A. Dobbin & Co.). Plea of nolo contendere. Judgment suspended. (F. & D. No. 26552. I. S. No. 2256.)

This action was based on the interstate shipment of a quantity of alleged cramp bark which, upon examination, was found to consist of a bark other than cramp bark.

On or about August 6, 1931, the United States attorney for the Western District of North Carolina, acting upon a report by the Secretary of Agriculture,

filed in the District Court of the United States for the district aforesaid an information against Edgar A. Dobbin, trading as E. A. Dobbin and E. A. Dobbin & Co., Lenoir, N. C., alleging shipment by said defendant in violation of the food and drugs act, on or about June 17, 1930, from the State of North Carolina into the State of New York, of a quantity of alleged cramp bark that was adulterated and misbranded. The article was invoiced: "True Cramp Bark."

It was alleged in the information that the article was adulterated in that it was sold under and by a name recognized in the National Formulary, and differed from the standard of strength, quality, and purity as determined by the test for cramp bark laid down in the said formulary official at the time of investigation, and its own standard of strength, quality, and purity was not stated upon the package.

Misbranding was alleged for the reason that the article was an imitation of cramp bark and was offered for sale under the name of another article, to wit, cramp bark.

On April 26, 1932, the defendant entered a plea of nolo contendere to the information and the court, after hearing the facts, ordered that judgment in the case be suspended.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19672. Misbranding of Pyo-Rem. U. S. v. Pyo-Rem Chemical Co., a Corporation. Tried to the court. Judgment for the Government. Fine, $100. (F. & D. No. 27439. I. S. Nos. 13149, 21760.)

The Pyo-Rem Chemical Co., a corporation organized and existing under the laws of the State of California, engaged in the manufacture of a certain drug designated Pyo-Rem, executed a written guaranty to certain purchasers of said product, that said article of drugs was not adulterated or misbranded within the meaning of the food and drugs act of June 30, 1906 as amended. This action was based on sales of quantities of Pyo-Rem, under said guaranty, which drugs were subsequently shipped in interstate commerce by the purchasers thereof.

On March 16, 1932, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States at Los Angeles, Calif., an information against the Pyo-Rem Chemical Co., a corporation, alleging, among other things, that on or about January 29, 1931, the defendant sold and caused to be delivered to the McKesson Western Wholesale Drug Co. at Los Angeles, Calif., a certain article of drugs, to wit, Pyo-Rem; that the defendant on or about January 2, 1931, sold and caused to be delivered to the Brunswig Drug Co. at Los Angeles, Calif., a certain article of drugs, to wit, Pyo-Rem; that on or about the seventh day of February, 1931, the said McKesson Western Wholesale Drug Co. shipped from the State of California into the State of New Mexico all or portions of said lot of Pyo-Rem, in the identical condition as when received from the defendant; that on or about the second day of January, 1931, said Brunswig Drug Co. shipped from the State of California into the State of Arizona all or portions of said lot of Pyo-Rem in the identical condition as when received from the defendant.

Analysis of a sample of the article by this department showed that it consisted essentially of zinc chloride, potassium chlorate, alcohol, and water, with small proportions of boric acid, chloroform, formaldehyde and volatile oils, colored with a red dye.

The information further alleged that the said article of drugs, sold and delivered as aforesaid, was misbranded within the meaning of the food and drugs act as amended. Said article of drugs was labeled on the bottles as follows, to wit: "Pyo-Rem 'The Dentist's Favorite Prescription' Each Fluid Ounce Contains 10 Per Cent. Alcohol 1 Minim Chloroform Useful and beneficial wherever an Astringent Mouth Wash or Gargle may be indicated. Pyorrhea, Alveolaris (Rigg's Disease), Tender, Bleeding, Soft, Spongy, or Receding Gums. Consult your Dentist often and use Pyo-Rem daily. 'Pyo-Rem A Real Tooth Saver The Pyo-Rem Chemical Company, Inc. 809 West 9th Los Angeles, Cal. General Uses and Directions."

It was further alleged in the information that the article of drugs was misbranded in that the statements, designs, and devices regarding the therapeutic and curative effects thereof, appearing on the labels of the bottles, were false and fraudulent in that the same were applied to the said article know-

ingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to purchasers thereof, and create in the minds of purchasers thereof, the impression and belief that the article was in whole or in part composed of, or contained, ingredients or medicinal agents effective, among other things, as a treatment, remedy, and cure for pyorrhea alveolaris (Rigg's disease), tender, bleeding, soft, spongy, or receding gums when, in truth and in fact, said article was not in whole or in part composed of, and did not contain, ingredients or medicinal agents effective, among other things, as a treatment, remedy, and cure for pyorrhea alveolaris (Rigg's disease), tender, bleeding, soft, spongy, or receding gums.

The defendant having pleaded not guilty, the cause came on for trial April 19, 1932, before the court, a jury having been waived, a stipulation of facts was offered in evidence in which the defendant admitted execution of the guaranty, that the sales had been made, and the subsequent interstate shipment of the product in question. Evidence was introduced on the part of the Government to show that the article, "Pyo-Rem," was misbranded in that the statements, designs, and devices regarding the therapeutic and curative effects of the said product, appearing on the labels of the bottles, were false and fraudulent. The defendant offered evidence tending to show that the label was neither false nor fraudulent. On April 21, 1932, at the conclusion of all the evidence, the case was continued for argument and the filing of briefs.

On May 3, 1932, briefs having been filed, arguments of counsel concluded and the cause submitted, the court held defendant to be guilty as charged in each count of the information. Thereafter, on May 16, 1932, defendant was by the court ordered to pay a fine of $100.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19673. Adulteration and misbranding of Runners extract of cod-liver oil cordial. U. S. v. C. H. Griest Co. (Inc.). Plea of nolo contendere. Fine, $5. (F. & D No. 26655. I. S. No. 28253.)

This action was based on interstate shipments of quantities of a drug product, known as Runners extract of cod-liver oil cordial, which purported to be an extractive of cod liver. Examination showed that 100 grams of the article were not equal to 1 gram of good cod-liver oil as a source of vitamin A. The carton and bottle labels also bore unwarranted curative and therapeutic claims.

On October 29, 1931, the United States attorney for the Northern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against C. H. Griest Co. (Inc.), a corporation, Wheeling, W. Va., alleging shipments by said company in violation of the food and drugs act as amended, on or about December 24, 1930, and February 12, 1931, from the State of West Virginia into the State of Pennsylvania of a quantity of the said Runners extract of cod-liver oil cordial that was adulterated and misbranded.

Analysis of a sample of the article by this department showed that it consisted essentially of compounds of phosphorous, calcium, sodium, potassium, iron, and manganese, and traces of quinine and strychnine alkaloids, wild cherry, sugar, alcohol, and water, flavored with orange and cassia oils. Biological examination showed that 100 grams of the article were not equal to 1 gram of good cod-liver oil as a source of vitamin A.

It was alleged in the information that the article was adulterated in that its strength and purity fell below the professed standard and quality under which it was sold, since it was represented to be extract of cod-liver oil cordial which contained a solution of an extractive from fresh cod livers, whereas it was not an extractive of cod-liver oil cordial and did not contain a solution of an extractive from fresh cod livers.

Misbranding was alleged for the reason that the statements, "Extract of Cod Liver Oil Cordial * * * Contains a Solution of an Extractive from Fresh Cod Livers," borne on the carton and bottle labels, were false and misleading, since the said article was not extract of cod-liver oil cordial which contained a solution of an extractive from fresh cod livers. Misbranding was alleged for the further reason that certain statements regarding the therapeutic and curative effects of the article, appearing on the bottle and carton labels, falsely and fraudulently represented that the article was effective as a reconstructive and as a digestive; effective to protect health; and effective when taken regularly and according to directions as a remedy to produce health; whereas the article contained no ingredients or medicinal agents effective for the said purposes.

On May 18, 1932, a plea of nolo contendere to the information was entered on behalf of the defendant company, and the court imposed a fine of $5.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19674. Adulteration and misbranding of Earle's Hypo-Cod in tablet form. U. S. v. Earle I. Runner. Plea of nolo contendere. Fine, $5. (F. & D. No. 26537. I. S. No. 5403.)

This case was based on the interstate shipment of a quantity of a drug product, known as Earle's Hypo-Cod in tablet form, which was represented to contain the therapeutically valuable principles of cod-liver oil. Examination showed that the article contained no perceptible amount of vitamin A, the characteristic vitamin of cod-liver oil. The bottles and cartons and the circular accompanying the article also bore unwarranted curative and therapeutic claims.

On November 4, 1931, the United States attorney for the Northern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against Earle I. Runner, Wheeling, W. Va., alleging shipment by said defendant in violation of the food and drugs act as amended, on or about January 30, 1930, from the State of West Virginia into the District of Columbia, of a quantity of the said Earle's Hypo-Cod in tablet form, which was adulterated and misbranded.

Analysis of a sample of the article by this department showed that it consisted essentially of iron, manganese, calcium, quinine, strychnine, and phosphorous compounds, extracts of plant drugs including a laxative drug, and a solid fatty acid. Biological examination showed that the article contained no vitamins of cod-liver oil.

It was alleged in the information that the article was adulterated in that its strength and purity fell below the professed standard under which it was sold, in that it was represented to be an improved compound cod-liver oil product rich in health-building vitamins which contained extractives of pure cod-liver oil representing millions of strength-building vitamins and rich in the extractives of codfish livers, whereas the article was not an improved compound cod-liver oil product; it was not rich in health-building vitamins; it did not contain extractives of pure cod-liver oil, and contained no strength-building vitamins, and it was not rich in the extractives of codfish livers, in that said article contained no vitamins derived from codfish livers.

Misbranding was alleged for the reason that the statements, "An improved Cod Liver Oil Tablet * * * the extractive of pure cod liver oil * * * containing the extractives or medicinal parts of pure Cod Liver Oil," borne on the carton and bottle, and the statement, "Earle's Hypo-Cod In Tablet Form the improved Cod Liver Oil Tablet * * * Rich in Health-Building Vitamines * * * rich in the extractives of cod fish livers—that part of cod liver oil which contains the millions of vitamines," contained in the circular, were false and misleading in that they represented that said article was an improved compound cod-liver oil product rich in health-building vitamins, and which contained extractives of pure cod-liver oil representing millions of strength-building vitamins and rich in the extractives of codfish livers, which contained millions of vitamins, whereas said article was not an improved compound cod-liver oil product; said article was not rich in health-building vitamins; said article contained no extractives of pure cod-liver oil and contained no strength-building vitamins; said article was not rich in the extractives of codfish livers and did not contain millions of vitamins; it contained no extractives of codfish livers and contained no vitamins. Misbranding was alleged for the further reason that certain statements, designs and devices regarding the curative and therapeutic effects of the article, appearing on the bottle and carton labels and in the circular, falsely and fraudulently represented that it was effective as a rebuilder of wasted and wornout tissues, effective as a health builder, effective as a treatment for nervousness, indigestion, impaired nutrition, malassimilation, anaemia and impure blood, effective as a general tonic in run-down and debilitated conditions of the system, effective to build up wasted and run-down systems, to put flesh on thin, frail bodies, and to make better health in general; effective as a general health and strength builder for thin, frail, run-down and wornout people, effective as a great health and strength builder, effective as a reliable health and flesh builder, effective to bring back to normal health those who lack ambition and energy and whose system is at its lowest ebb and those who have no appetite and those

whose complexion is pale and sallow, effective as a substitute for cod-liver oil in the treatment of weak, thin, scrawny, and scraggly children and to build up and strengthen little children, and effective as a treatment for weak and sickly children; when, in truth and fact, said article was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective for the said purposes.

At the Wheeling May, 1932, term of court the defendant entered a plea of nolo contendere, and on May 18, 1932, a fine of $5 was imposed by the court.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19675. Misbranding of Dr. Tripp's tonic prescription. U. S. v. 12 Bottles of Dr. Tripp's Tonic Prescription. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27923. I. S. No. 47832. S. No. 5929.)

Examination of the drug product, Dr. Tripp's tonic prescription, involved in this action, disclosed no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed for it in a circular shipped with the article.

On or about March 22, 1932, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 12 bottles of the said Dr. Tripp's tonic prescription at Detroit, Mich., alleging that the article had been shipped in interstate commerce on or about January 25, 1932, by the Norwood Pharmaceutical Co., from Chicago, Ill., to Detroit, Mich., and charging misbranding in violation of the food and drugs act as amended.

Analysis of a sample of the article by this department showed that it consisted essentially of potassium iodide (2.28 grams per 100 milliliters), extracts of plant drugs including colchicum, cinchona, and a laxative drug, red saunders, alcohol, and water. Total cinchona alkaloids (0.17 gram per 100 milliliters, 7 milligrams per teaspoonful).

It was alleged in the libel that the article was misbranded in that the following statements regarding its curative and therapeutic effects, appearing in the circular, were false and fraudulent, since the said article contained no ingredient or combination of ingredients capable of producing the effects claimed: "Be Alive! Enjoy Rugged Health Use * * * for Blood Impurities * * * Rheumatism, Arthritis, Neuritis, and All Blood or Skin Troubles * * * How Health Dies Watch for These Symptoms Health Chart Blood Impurities Skin Troubles * * * Nervous Debility Rheumatism * * * Many Ills Result From Some Slight Cause But—Human Wrecks Gain New Health, Strength, Vigor, Through Dr. Tripp's Marvelous Scientific Discovery—a Tonic Prescription that Revitalizes the Entire Human System by Eliminating Poisons The Downward Road Human forms are merely pieces of mechanism—vastly more delicate, however, than any machine of human construction. But, like an automobile, for example, if the transmission becomes clogged, if the obstruction is allowed to continue, the entire mechanism is certain to 'go to pieces.' So, if some obstruction to the working of the human system occurs—if some functioning organ, nerve center, blood cell or canal, becomes a subject of interference in its operation, and this condition is allowed to continue, defects in functioning are certain to spread throughout the human system. Thus, even a 'tired feeling' is a sure index that something is wrong with the internal mechanism. Mere weariness is a warning that some portion of the system needs careful attention to determine its health status. Constipation a First Step towards a Completely Disorganized System It is an axiom in the medical world that Constipation is the cause of more serious complications, the basis of many more dangerous ailments, than any other form of obstruction to functioning of the organs. Constipation merely means that the digestive tracts and organs are not working properly. When that occurs, even though the trouble may have lasted only a few days, various poisons have been developed from the food secretions. They become distributed to the entire human system through blood action. When a second 'slight attack' of Constipation occurs, more poisons are sent through the system—and Constipation becames more frequent—it turns into a 'chronic' case. Carelessness Aids No ailment is neglected so frequently through carelessness as Constipation. It is characteristic of humans to regard Constipation merely as a temporary condition. Yet, among first results of Constipation are such perilous ailments and diseases as all blood and skin disorders, fevers of various types, constant

headaches, pains and aches throughout the body, ills that develop rapidly into such agonizing diseases as Rheumatism, Gout, Neuritis, Arthritis, Sciatica, Kidney ailments, blood impurities that induce such torturing and disfiguring ailments as Acne, Eczema, Pimples, Blackheads, Scrofula. For these reasons all humanity should avoid Constipation as a pestilence, for aside from the ailments already mentioned, Constipation is the direct cause of a nervous and physical breakdown, through shattering the entire nerve system of the body. Health Restoration Must Depend on Reproducing Normal Conditions Through many years it was thought by even the most expert physicians that ailments, particularly those of a painful nature, should be treated 'locally'—that is as ailments that should be considered as originating at or near the point where the pain occurs. Thus, in case of Rheumatism, Gout, Neuritis, Arthritis, Sciatica, etc., it was thought local applications—liniments or soothing injections—would be sufficient to destroy the disease. But later research disclosed the conditions above related—that such ailments have their rise in more fundamental causes and therefore, must be treated fundamentally. * * * Awaken the Body Dr. Tripp's investigations led him to the positive conclusion that most of the human ills are due to dormant or obstructed conditions of some part of the system. He determined to find some method for awakening those functioning organs that were dormant and removing the obstructions from those that were clogged. After long experimentation with various mineral, vegetable and alterative elements, Dr. Tripp produced a compound which proved, after many drastic tests, to be a restorative for disordered conditions of the blood, stomach and nerve systems. His secret scientific formula was guarded carefully for years, but the rapid, careless, modern life has brought on such a sweeping destruction of average human health that public interest and benefit now demand that this wonderfully restorative prescription be placed in the reach of all humanity. Proper Functioning of All the System Must be Brought About Set every organ of the body at work. Oust blood impurities. Cleanse the stomach of collected food poisons. Give Nature a proper chance to keep the human system in normal condition by removing the antagonistic conditions brought about by carelessness, inattention to proper eating, and the wrongful 'dosing' * * * the effects of various * * * healthful ingredients produced by Nature * * * has succeeded is shown by the * * * commendations * * * Constipation If you are ignorant of the direful results that follow just one ailment—Constipation—read the following partial list of diseases or distresses that grow out of continued Constipation: * * * Blotches, Blemishes, Nervousness, Backaches, A 'Generally Run Down' Condition, Liver, Bladder, Kidney Diseases, Gout, Lumbago, Rheumatism, * * * Arthritis, Neuritis, Women's Ailments, Completely Shattered System. When you understand the numerous and dangerous complications that almost surely arise from neglecting symptoms of an obstructed physical organization, you will understand more readily how one scientifically compounded prescription may be depended upon to restore healthful conditions, even to a physical system that may be almost completely disorganized. Cleansing of Blood and Stomach Organs Opens Road to Health Dr. Tripp's Tonic Prescription is, first of all, a dissolver of poisons and cleanser of the system. It dissolves and throws off—eliminates—the poisonous products stored up in the glands and tissues. The alteratives the compound contains hasten to carry the toxins out of the blood circulation; the compounds act rapidly in alkalinizing the blood stream and reducing acidosis—and continues to do this work until the patient is relieved. While this cleansing process is going on the Tonic elements of the prescription are serving to build up strength, vitality * * * and with them the optimism of returning health that in itself is a powerful aid to complete restoration. Painful Ills Rheumatism, a common form of ailment, is most frequently a stubborn disease. Its torturing pains, its habits of causing frequently distorted hands, twisted legs, or bent back, make it one of the most terrifying of human ills. Associated with Rheumatism are several other forms of disease similar to a large degree in their effects to Rheumatism. Acute inflammatory Rheumatism may be regarded as an infectious disorder—an invasion into the blood stream of bacteria. Articular Rheumatism, known as 'joint' Rheumatism, arises from unoxidized products, impurities in the blood, etc. It can be seen readily, therefore, that mere local applications, or purely local treatments—that is, medicaments designed to strike only at relieving pain—cannot be expected to bring about permanent relief. To do so, one must strike at organic

purification—and that is the principle of Dr. Tripp's Tonic Prescription. Gout, Arthritis, Neuritis, Sciatica, Lumbago—All from One Condition So it is with other forms of disease of Rheumatic character—Gout, Arthritis, Neuritis, Sciatica, Lumbago. Arising, as they do, from a disorganized internal condition, the scientific method of treatment, according to Dr. Tripp, is to strike at that disorganized condition—bring about healthful action of the functioning organs of the body, expel blood impurities, thus giving new life and vigor to the human tissues, the bones, the nerve system, stomach operation, digestive organs, and bringing about natural, healthful expelling of food secretions and their accumulating poisons * * * In many cases the physicians themselves were sufferers from a malady they did not know how to destroy—yet they acknowledge freely that Dr. Tripp's Tonic Prescription brought them complete relief. * * * You also will find proofs from patients, many of whom were victims for years of chronic ailments, who tell you they were relieved completely * * * and that their ailment has not since returned to afflict them. Dr. Tripp's Tonic Prescription is Valuable for Preserving Health, as well as for Restoring It At the slightest appearance of fatigue from over-work, over-indulgence, or any other cause, the use of Dr. Tripp's Tonic Prescription will prove astonishingly beneficial in bringing about buoyancy of spirits, vigorous physical and mental activity—and in acting as a deterrent against inroads of any of the many forms of ailment arising from any depression in the condition of health. In more advanced stages of a 'breakdown' Dr. Tripp's Tonic Prescription will be found remarkably beneficial, no matter how baffling the case may be, and regardless of what forms of treatment may have been used without avail. * * * Its tonic effects begin to be felt almost immediately. A healthier bowel movement becomes apparent. * * * The listless feeling induced by sluggish blood begins to disappear. The muscles respond more freely when called into action—and the agonizing pains in cases of Rheumatism, Arthritis, Neuritis, etc., lessen rapidly as the treatment progresses. As day by day passes and you become more invigorated, more optimistic, your entire being begins to be filled with healthful and happiness producing vitality * * * in many cases these doctors used Dr. Tripp's Tonic Prescription to relieve their own sufferings. * * * Is Your Ailment Listed Here? Look over the list of ailments listed below. If you are afflicted with any one of them, or if your symptoms indicate that any one of these ailments is getting a hold on you, respect your own health—get a bottle * * * Dizziness * * * Neuritis, Liver Complaint, Nervous Debility, * * * Skin Troubles, Arthritis, Bladder Troubles, Rheumatism. Or, if you have a feeling of general sluggishness, if your complexion is sallow, if you feel 'all run down,' if action of the kidneys is not free—these are symptoms leading to one or more of the serious ailments mentioned—and others still more dangerous. * * * Sufferers, * * * your own good judgment must tell you you should not risk complications, but should protect your health and happiness * * * Regain Health Now Quick, permanent relief from bodily ailments arising from remedial causes—such as * * * Blood Impurities, Stomach Disorders * * * [Testimonials] Minister Is Restored to Pastorate Free from Suffering He is now able to travel in all kinds of weather to preach the gospel * * * Free from former agonizing pains * * * 'My son obtained your Dr. Tripp's Tonic Prescription for me and I want you to know that it has entirely eradicated my Rheumatism, from which I was a sufferer for a number of years. As I am a Baptist minister, I am subjected to a great deal of exposure while visiting and preaching in the various churches in my circuit, over a wide area here in southern Kansas, and must travel in all kinds of weather.' I have taken two bottles of Dr. Tripp's Tonic Prescription and am entirely cured and feeling better than I ever did, and am free from all of my former agonizing pain. My wife has also been freed by the same means, and we are both recommending it to all our friends as the only preparation that we have ever found that does the work and I wish to thank you for putting such a wonderful medicine on the market, and I heartily commend it to anyone who is a Rheumatic sufferer.' * * * 'I am freer from pain than I have been for many years.' * * * 'Results obtained in the case of my wife were highly satisfactory. She is now able to attend to her household duties.' '* * * case of two years' standing, which was entirely relieved on one bottle.' * * * 'Covering a series of a hundred cases embracing all the known forms of Rheumatism, the results have far exceeded my expectations. * * * for the relief and cure of suffering humanity.' * * * for Neuritis. * * * 'The undersigned tried your Dr. Tripp's Prescription personally for

torticollis and neuritis of right shoulder with good results. Being convinced that it delivers am using it daily in rheumatic cases with success.' * * * Treats Wife's Arthritis Case '* * * Have been trying your Dr. Tripp's Prescription on my wife's case of arthritis and am very much pleased with results so far.' * * * Does Not Injure Stomach * * * 'Have been using your medicine on my wife. It seems to be giving her more relief than anything else she has ever taken to relieve her rheumatism. This medicine does not hurt her stomach any like the other medicines she has taken from time to time. My wife has been afflicted for some twenty-five years. * * * Before bottle was half gone much improvement was reported and last time I saw patient, she felt practically free from discomfort. This case convinced me that you have a very efficacious remedy.' * * * Relieves 79-Year-Old Woman * * * 'I had a chronic case, an old lady 79 years old, afflicted with rheumatic arthritis. She, after taking one bottle of Dr. Tripp's Prescription is like a new person. I certainly was astonished at her condition as it is almost miraculous. As for myself, after taking nearly all of one bottle I am wonderfully relieved. I have been a chronic rheumatic for forty years.' * * * 'If it always gives results as it did in this case, * * *' 'I had inflammatory rheumatism and gout. Am a heavy man, my weight being 265 pounds. I took ⅔of a bottle first and was cured for two years. Last Fall I felt another attack coming on and immediately got two bottles. One I kept in my office, the other at my home. Before taking ¼ of each bottle I was cured.' * * * Says Neuritis Disappeared 'I had suffered terrible misery with neuritis for almost two years * * * I got relief while taking the first bottle of Dr. Tripp's Prescription and am now entirely free from all pain.' * * * Discards Crutches—Blood Pressure Drops 'I was walking with crutches. I phoned drug store to send me a bottle on Monday. I began using it that day. Wednesday I could walk without crutches and have never used them since. I am well. I don't suffer at all. I had suffered with high blood pressure, but after taking Dr. Tripp's Prescription I am well.' * * * Couldn't Walk for Eight Months 'I used two bottles of your Dr. Tripp's Prescription last Spring when I could not walk for eight months. I am perfectly cured now and feel good.' * * * 12-Year-Old Lumbago Case 'I have been subject to attacks of lumbago for the past twelve years, having several attacks a year, often being confined to my bed and not able to turn over alone. I took two bottles of Dr. Tripp's Prescription over a year ago and have not had an attack since. Prior to taking your medicine I doctored * * * for lumbago.' * * * Regains Use of His Arm 'For three years I had Rheumatism so bad in the right arm and shoulder that I could not reach back to get a handkerchief out of my pocket. I took Dr. Tripp's Prescription and it cured me—I can use my arm now as I am able to work. I will recommend Dr. Tripp's Prescription to every sufferer I hear of.' * * * 'Two years ago this month, April, I was taken down with inflammatory Rheumatism and was in bed two months. Doctored all the time but without much relief. However, I could walk with a cane. I have a job on a railroad; would go to work every night at 11 o'clock feeling good, but in the morning I could hardly walk home. I saw your advertisement on a Sunday, got a bottle on Monday and about Wednesday of the same week I walked home as good and well as I ever did in my life, without an ache or a pain and I have never felt a pain since.' * * * Is Able to Work Now 'Was troubled with Rheumatism for three years and at times couldn't work. * * * I used your Dr. Tripp's Prescription and am working every day now.' * * * I found out that I could work and had no more Rheumatism left.' * * * Returns to Steel Mill Work 'I had such sore joints last year that I could not work in the steel mills for a month, and I really believe I am cured, for after I took the second bottle of Dr. Tripp's Prescription the pains left my joints and bones.'"

On April 7, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

INDEX TO NOTICES OF JUDGMENT 19653–19675

U. S. GOVERNMENT PRINTING OFFICE: 1933